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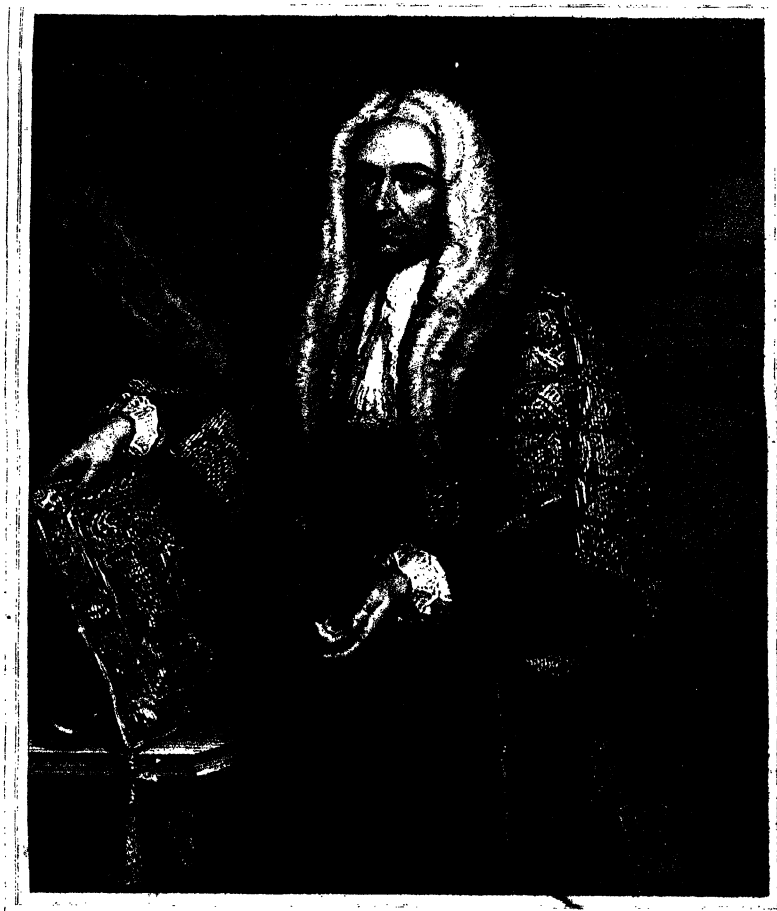












Engraved by W. F. Price.

PHILIP YORKE, EARL OF HARDWICKE

OB. 1764.

FROM THE DRAWING BY JAMES WATSON, IN THE COLLECTION OF

THE RIGHT HON<sup>BLE</sup> THE EARL OF HARDWICKE.

# THE LIFE

## LORD CHANCELLOR HARDWICKE;

WITH SELECTIONS

FROM HIS

CORRESPONDENCE, DIARIES, SPEECHES, AND JUDGMENTS.

GEORGE HARRIS, ESQ.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

If you wish to employ your abilities in writing the life of a truly great and wonderful man in our age, take the Life of Lord Hardwicke for your object; he was, indeed, a wonderful character—he was Chief-Justice of England, and Chancellor, from his own abilities and virtues.”

LORD MANSFIELD.

IN THREE VOLUMES.

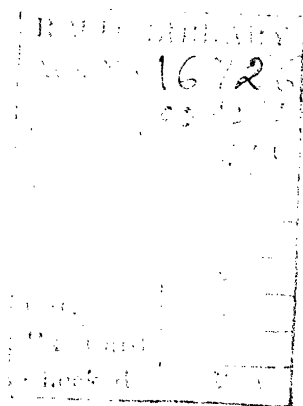
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TO  
HIS ROYAL HIGHNESS PRINCE ALBERT,  
&c. &c. &c.  
CHANCELLOR OF THE UNIVERSITY OF CAMBRIDGE,  
AND  
BENCHER OF THE HONOURABLE SOCIETY OF LINCOLN'S INN,  
WHOSE SOLICITUDE FOR THE INTERESTS OF THIS COUNTRY,  
AND ATTENTIVE STUDY OF ITS CONSTITUTION AND LAWS,  
FORM A TRUE BOND OF UNION WITH IT,  
AND A LEGITIMATE TITLE TO ITS PROFESSIONAL HONOURS,  
THE  
*Following Memoir*  
OF AN  
ENLIGHTENED ENGLISHMAN AND EMINENT LAWYER  
IS,  
WITH HIS ROYAL HIGHNESS'S PERMISSION,  
RESPECTFULLY DEDICATED,  
BY HIS OBEDIENT HUMBLE SERVANT,  
THE AUTHOR.



## P R E F A C E.

IN presenting to the public the memoir of a distinguished public man, which is first offered to the world at a period of more than three quarters of a century after his decease, it is necessary to afford some explanation as to the materials from which his biography has been supplied. This is essential to enable the reader to form a correct notion of the nature of the work before him; and it is due to the author that, before condemning him for the errors and defects with which he is conscious his performance abounds, certain of the peculiar difficulties and perplexities attendant on his task should be exhibited.

The sources from which the matter for these volumes has been mainly obtained are as follow: the extensive correspondence, both official and general, which was carried on throughout his career by this distinguished man with the different leading political and other illustrious personages of the day, as also with the various

members of his own family; and which is now preserved among his papers at Wimpole; the diaries or memoranda which he was in the habit of occasionally making, in which he noted down at the time, with great care and minuteness, any particular event of importance in which he was a participator; the diary of his eldest son, the Honourable P. Yorke, afterwards the second Earl of Hardwicke; the manuscripts of different kinds, left by Lord Chancellor Hardwicke, including his own notes of his speeches and judgments; the Parliamentary records of the speeches he delivered; the reports of the State Trials, in several of the most important of which he was engaged either as an advocate or in his judicial capacity, and of which his own memoranda are still extant; and the records which have been preserved of those noblest monuments of his genius, the judgments which he pronounced during the long period that he presided as Lord Chief Justice, and Lord High Chancellor of this kingdom. To these may be added the ordinary sources of information in the newspapers, periodicals, and other publications of the day.

The correspondence above mentioned, which is of great extent and variety, and a careful selection from which has been made, relates to matters of different kinds, both public and domestic; and there is scarcely any event of importance of either class, during that very interesting and exciting period over which it runs, which is not included

in it. In many instances this has been used as the vehicle for describing occurrences which are only known from having been delivered to the world by those who are here the relators of them; and as far as was attainable Lord Chancellor Hardwicke has been made the narrator of his own biography, by the extracts which are given from his familiar letters, in which he records from time to time his various occupations and movements.

Both as a statesman, and in his domestic and private life, these epistles,—as is usually the case with the familiar or confidential correspondence of men of this class,—serve essentially to elucidate the real character of Lord Hardwicke.

The private letters of the different leading political personages of the time cannot be read without interest, affording, as they do, the most correct and perfect insight into the actual sentiments and feelings of those distinguished men.

In the portions of Lord Hardwicke's own Diary here given, as also in some of his correspondence, he records with great exactness and particularity his impressions of certain events of deep importance, with which at different periods he was especially connected; and in several instances makes us acquainted with scenes, and with the characters of individuals, which he only had the full opportunity of judging of and describing.

The Parliamentary Diary and Letters of the Hon. P. Yorke, eldest son of Lord Chancellor

Hardwicke, and who became the second Earl, in which are preserved his own account of the principal political events of the day, especially those with which the Chancellor was connected, have been extracted from in the following pages, and serve as most valuable illustrations and descriptions of the Chancellor's career, presenting occasionally vivid sketches of the scenes portrayed. In Mr. Yorke's letters, and those of his brother, Mr. Charles Yorke, both of whom were for a long period members of the House of Commons, much interesting matter of this kind is contained. Whatever defect these memorials might be supposed to possess, owing to the naturally strong partiality of the writers to the principal subject of them, is more than amply atoned for by the deep interest which they felt in the leading character described, and the lively manner in which they have narrated all belonging to him. The letters addressed to these distinguished personages by Dr. Birch, relating to many important transactions and occurrences, particularly those in which the Chancellor took part, form an agreeable portion of the materials for this work, and the greater part of which have not before been made public.

The Parliamentary speeches delivered by Lord Chancellor Hardwicke have been selected from with great care, correct reports of them having been obtained both from his own private notes and, in a few instances, from printed copies of them revised by himself, as also from the ordinary re-

cords of them in the publications of the day. In certain cases of great consequence and vital interest, entire speeches of Lord Chancellor Hardwicke are inserted. In other instances particular portions only, containing sentiments of considerable value, have been extracted ; while of several a mere general epitome has been afforded ; and some, from the interest of them being confined to the circumstances about which they were spoken, appeared to require only a passing notice. The collection and record here of those on great legal or constitutional points, which are applicable to all times and to many different occasions alike, cannot be deemed unimportant ; and few will fail to derive high satisfaction and extensive improvement from their perusal.

A selection, with much care, has also been made from Lord Hardwicke's arguments while at the bar, and from the judgments delivered by him, both as Chief Justice and Lord Chancellor, and which have been obtained from his own notes and draughts of them, and also by reference to the published reports. Those of leading interest have been fixed upon, and, as far as possible, divested of their legal technicalities. The omission altogether from the present work of this very important portion of the matter, would be to neglect the main basis on which Lord Hardwicke's fame is founded ; and some acquaintance with which is absolutely essential, in order to form a just and adequate notion of the qualities which adorned this great legal

luminary. To throw them into an Appendix would be practically to separate them from the memoir, and proclaim them as unfitted for the general reader. To give a mere summary of their purport would afford no real acquaintance with their nature and value. It has, therefore, been thought desirable to incorporate them as much as possible into the body of the work, of which they form a very indispensable and essential ingredient. They have been subjoined to the end of each chapter, according to the period of their delivery ; so that while the professional reader may continue his progress in the perusal of them, and be aided by them in his perception of the character of the subject of this memoir, the general reader, who may perhaps be repulsed by the professional aspect or apparently technical nature of these documents, may pass on when he arrives here, without the course of the narrative being interrupted. Not only, however, will all the cases selected be found, for the most part, intelligible to every reader of cultivated understanding, whether “learned” or only “gentle,” so as to enable him to discern their nature and style and characteristics ; but they serve in an eminent degree to afford an insight into the leading and most important principles of law, and mode of dealing with them, which every person of extensive education must desire to possess, and which few expressly legal treatises conduce equally well to render ; containing, as these efforts of Lord Hardwicke’s mind

do, reasoning of the highest order, and, in many cases,—especially if contrasted with the arguments and judgments of our own day,—almost partaking more of the nature of philosophical dissertations, than professional practical expositions. The notes of his arguments more particularly, and the skeletons of his judgments which he was in the habit of making, exhibit a complete view of his mode of preparing himself on occasions of great importance.

If some portion of the work, which consists in the official correspondence of the subject of it with the different leading statesmen of the day, is less original than what has been found in other similar works, it must be considered that this is owing to the great liberality which has ever been evinced by the members of Lord Hardwicke's family, in giving to the world, whenever they have been called for, whatever of interest or value has been found among his papers relating to particular subjects which have been brought before the public. There are few, if any, productions of importance relating to the transactions of his time, whether biographical, political, legal, or historical, but what have been enriched by contributions from these relics, which is indeed the best proof that could be afforded of their worth. It will be therefore unreasonable for the public to object that a portion of what they here find has already, in some shape or other, been presented to them before. This would be in effect

to murmur at the generosity which has been so largely dealt out to them, for the puerile reason that they cannot now again enjoy as new those pleasures with which they have already been satiated. But the actual value of these papers cannot be at all affected, either as regards their intrinsic independent worth, or as forming part of the work before us, by the circumstance alluded to, although the novelty of a certain part of them may be to some in a certain degree diminished. Should this be found to be the case, as the occasion of it has been of such extensive benefit to the world at large, neither they nor the author himself ought to complain. The only real subject of regret is that more collections of valuable matter of a similar nature, are not more frequently allowed to be similarly made use of.

As the different writers on topics connected with Lord Hardwicke have borrowed so largely from the materials which belonged strictly to his own biography, to a certain extent a sort of compensation has been exacted from them for this, by borrowing from them in return a few of the materials which they have collected from other sources, relating to their own subject more particularly, but which may serve also to illustrate that immediately before us. The acknowledgment of this, however, in each case, will be found to be duly made.

The private correspondence of this great man

with his own family and personal friends, and which forms by far the largest and the most interesting portion of these biographical materials, is almost entirely unpublished, as is indeed the principal part of that of an official character.

The true and real use of biography is to serve as a practical exposition and illustration, intellectual and moral, of life and of human nature, showing how different influences, and capacities, and dispositions, lead on to certain results, and objects, and attainments. It should conduce to point out the proper course to be followed and that to be avoided, and to afford at each turn a full and clear demonstration of the truths it discloses. A mere dry narration of events is but a barren production, and serviceable only as a record of the facts it contains. The duty of the biographer is to trace and to illustrate these various connections and causes, whether on mind, on character, or on life ; and on all occasions to induce suitable reflections and deductions from the circumstances detailed.

The great disadvantage under which any one labours,—in this respect more especially—in writing the memoirs of a person so long after the period of his death, as has been the case in the present instance, when all private personal recollections and traits have been long obliterated, and some of the most valuable materials of biography lost for ever, must at once be obvious. In such a case it is indeed impossible to afford a perfect

account as regards the private, especially the early career of the individual in question. The public life of Lord Hardwicke is so identified with the history of his country, as to cause his own history to be well known from the period of his entry upon his eventful course. With respect to his private life, a few very striking characteristic anecdotes are preserved of his youth, which form a strongly developed outline, such as may be filled up in the mind of the reader with tolerable exactness by inferences and calculations on the conduct he would pursue, and in which we are extensively aided by the information which is afforded of his character and actions by the events of his public career.

Indeed a really complete biography, especially as regards the early part of it, recording and developing the growth and progress of each faculty and acquirement, and the gradual formation of the mind and character, can only be achieved through the united efforts of the subject of it himself, and the early judicious and experienced observers of his youth combining their recollections and feelings with his own; and requires in the execution of it a mind of very varied powers and knowledge;—so that the idea of a perfect work of this nature is probably about as chimerical as that of a perfect subject of biography.

From the long period which has elapsed since Lord Hardwicke's death, and the consequent oblivion of several matters connected with him

have arisen two defects in the compilation of this history, which the author's own deficiency and want of skill will, he is conscious, render more apparent than would be the case if the work had proceeded under the auspices of a writer more able and more experienced.

The first of these is the apparent disconnection of successive events in some parts of the narrative, owing to the absence in those portions of private personal anecdote relating to that period of the Chancellor's career, by which the disjointed occurrences might have been, as it were, cemented together.

The other point alluded to is the scanty information now to be obtained relative to certain collateral matters referred to in some of the letters and documents here inserted or quoted from, but which papers are nevertheless, as a whole, of considerable interest. They have not, therefore, been withheld from publication, imperfect as they may occasionally appear, as while their bearing on and elucidation of the life and character of Lord Hardwicke, for which only they are introduced, is not less valuable or complete, the information lost is not often of much importance in itself, and of hardly any as regards its connection with the main part of the narrative.

The occasional inconsistency, and even contradictions, as to some of the statements and facts relating to events in the history of Lord

Chancellor Hardwicke, which are to be met with in different quarters, have also been the source of no small perplexity and difficulty to his biographer, and several of which he is precluded from satisfactorily clearing up, owing to the length of time that has elapsed since their supposed occurrence. It has therefore been found necessary to deal with these opposite statements as though each were true to some extent; or, at any rate, to consider each as entitled to credit so far as this was at all compatible with the admission of the adverse story.

In the case of some transactions of exciting interest connected with Lord Hardwicke's career, and about which many different accounts have been handed down, recourse has been had to the various periodicals and public journals which appeared at the time, and which contain probably the most authentic descriptions of what really took place. The narration of several of these circumstances is detailed in the exact language of these chronicles, which, like the private diary of an individual, serves to convey to us the most forcible impressions of the event as received at the moment of its occurrence, and affords the most vivid ideas of the transaction, but which would be necessarily lost by a remodelling of the language used. These journals of the nation's life,—the diaries of its every-day progress,—are after all, if fully considered, the most philosophical guides, the most unerring records, and the

best resources of the historian, for supplying a real notion of its condition at the period when they were compiled. These are the purest and most original fountains of knowledge of the events of the time. The current rolls here in its wonted course. Here we have each transaction presented to us in its true natural order and colours, from the first whisper of its existence—the early rumour, originally disbelieved, perhaps contradicted “on authority,” then doubted, by degrees growing stronger, and at length expanding into a full-blown, well-attested fact. Very different are the impressions, and far less animated are the feelings with which the writer describes these transactions in after ages, when the whole issue of the proceeding is known to him ere he commences the narration of it, and whose accuracy is insured by no rival journalist who is eager to expose him should he err or be careless as to the correctness with which he details his facts. Vivid sketches of this kind of particular events, (like the narration of characteristic traits in an individual,) serve to afford a more lively and forcible idea of the real nature and features of the times, than the fullest and most elaborate description could do.

It has been the author's endeavour as much as possible, in the descriptive portion of his work, to make the witnesses of the scenes portrayed, and the contemporary critics on the

characters introduced, each tell their own story, and express their own opinions, just as they delivered them, instead of aiming to effect this in his own words, or resorting to the not difficult though somewhat dishonest process of adopting their sentiments in his language, and banishing the typographical marks of distinction which denominate the portion of the narrative borrowed from another's resources. This course, though he is aware it may detract considerably from the apparent originality of some parts of the memoir, and even subject the writer to the supposition, which might not otherwise have been entertained, of relying too much on the labours of others, will with the best judging be deemed in itself to add essentially to the real value of the work itself. Indeed, the best commentary that could be supplied is that which arises from the reader's own reflection; and the best mode of treating the matter is that which is adapted the most readily to suggest these observations to the mind.

A great master of British eloquence, some of whose correspondence has enriched the following pages, deemed it not beneath him, when addressing the subject of this memoir, thus to entreat a friend:—"Pray correct the English, in my answer to the Chancellor, where there are slips." The writer of these volumes may therefore surely be pardoned for making the same request to the

courteous reader, considering how far greater a necessity in his case there really is for demanding such indulgence.

The author has availed himself of such portions of the various works and correspondence of the celebrated Horace Walpole as relate to the subject of this history, notwithstanding the strong aversion which that very amusing though equally unscrupulous writer entertained to Lord Chancellor Hardwicke, and the virulence with which he on every occasion assails him. As regards some facts, however, it is only from the mouth of an adverse party that any evidence respecting them can be obtained; in which case, of course, due allowance must be made for the feelings and prejudices of the narrator, against the individual for whom he is called to speak. Fortunate they who, as is particularly the case with the great man before us, are too securely established in character and reputation, by other more indubitable and more honourable testimony, to suffer any real injury by the recklessness or dishonesty of a perfidious witness.

Throughout the narrative every circumstance has been brought forward, of which the materials supplied information, whether favourable or unfavourable to the individual whose history is described in the following pages; and nothing has been concealed or kept back because it might appear injurious to his reputation. To this course

the author has been induced by no indifference respecting the fame of the great man whose biographer he has aspired to become ; but from the fullest persuasion, that his character when viewed as a whole is well able to bear the strictest scrutiny ; and that his career through life requires only to be impartially displayed to insure for it the admiration it so highly merits.

*9, King's Bench Walk, Temple,*  
*11th December, 1847.*

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THE LIFE  
OF  
LORD CHANCELLOR HARDWICKE.

CHAPTER I.

1690—1715.

LEGAL BIOGRAPHY—FAMILY HISTORY OF THE YORKESES—BIRTH OF LORD CHANCELLOR HARDWICKE—EARLY INFLUENCES ON YOUNG YORKE—AT MR. MORLAND'S SCHOOL—YORKE'S EARLY CORRESPONDENCE—ARTICLED TO A SOLICITOR—BECOMES A STUDENT OF THE MIDDLE TEMPLE—EDUCATION, LEGAL AND GENERAL—STUDY OF FIRST PRINCIPLES—YORKE'S EARLY PURSUITS—LETTER TO HIM FROM A SCHOOLFELLOW—CONTRIBUTES A PAPER TO THE SPECTATOR—INTRODUCTION TO LORD MACCLESFIELD.

IF the law is entitled to be regarded as one of the first and noblest of sciences, and as affording ample scope for the highest and most perfect exercise of reason itself—and if from the earliest ages, and in all civilized countries, the pursuit of this study has engaged men of the most powerful capacities and cultivated minds—it must indeed necessarily follow that the life of a great lawyer cannot be altogether destitute of interest to mankind in general. This is more especially to be inferred when we consider that the object of his attention is one which, of all the sciences, is the most intimately connected with

the practical conduct of life, and the illustration of human nature in every variety of circumstance and development.

The biographies of different persons of this class must, however, differ greatly one from another with respect to the actual interest they are capable of affording; which will, of course, mainly depend on the particular character and actions of the individual in question, and the events attendant on his career. Among the most important of these we may instance the difficulties and discouragements which such persons at their first setting out had to encounter—the success with which they overcame these obstacles—the extent and greatness of the rise they effected—the reputation they obtained—the remarkable occurrences with which they were brought in contact—and, not least, the general importance of the times during which they lived. In all these respects the life of Lord Chancellor Hardwicke presents a singular combination of circumstances, each contributing to render it one of deep interest, and when united together, sufficient to give to it a very extraordinary degree of attractiveness and importance. Thus, his rise from his original comparatively humble situation to a high rank in the peerage, and the two highest law offices in this kingdom, so eminently distinguished for its jurisprudential system,—the rapidity with which he advanced in his career, the reputation which he acquired at each successive stage and in each office he filled, the exciting transactions in which he was professionally engaged, the momentous occasions on which he presided in the House of Lords as Lord High Steward, and the important period in the history of this country during which he so largely influenced the councils of the state, must render his own history one of more than

ordinary interest, whether we consider him as furnishing a most striking subject for biography, as connected in an essential manner with the rise and advancement of the profession he so eminently adorned, or as intimately associated with the annals of this nation.

An inquiry into the genealogy of a man of really great and original talent is, perhaps, of all others, the matter of least interest connected with him. In some instances, indeed, this investigation, so far as regards his immediate ancestry, may be highly important, as serving to develop the transmission of hereditary qualities and dispositions, and to illustrate the influence of these in various ways where anything remarkable with respect to them is discoverable. We are also naturally in some degree curious to ascertain what was the station in life occupied by the family of the subject of our inquiry.

In Lord Hardwicke's case, while on the one hand his family were to such an extent without means and influence as to render his rise in the world entirely dependent on his own merit and exertions, on the other hand, from the resources they possessed, and their standing in society, they were enabled to afford him all the advantages of a liberal and polite education, both as regards the cultivation of his mind, and the habits and society in which he was brought up.

The family of Yorke is one of considerable antiquity, and at different periods has been connected by inter-marriages with some of the best blood in this country. A branch of it held the hereditary mayoralty of Calais during the fifteenth century. At the time of Lord Chancellor Hardwicke's birth the family was on the decline, until the fortunes of this young member of it turned back the current, and caused the tide of prosperity to flow to a height far beyond what it had ever

before reached ; nevertheless, at this period they possessed landed property in the neighbourhood of Dover, as appears by a deed made in the year 1711, just after the subject of this memoir came of age ; and by which certain houses and lands, comprising 240 acres in the parishes of Alkam, River, and Lidden, near Dover, were (subject to an annuity of 30*l.* to a relative, which was charged thereon) settled upon old Mr. Yorke for his life, and after his death on his son Philip, afterwards Lord Chancellor Hardwicke, in fee. This estate was family property, and remained in their possession until the time of the late Earl of Hardwicke.

Simon Yorke, who was born at Calne in Wiltshire in 1606, and who is supposed to have come from the north of England, and to have been a branch of the Yorkes of Richmond in Yorkshire, and who had himself a good landed property in the former county, left Wiltshire soon after the death of Charles the First, with the intention, it is stated, of quitting England, on account of the prominent part that he had taken on the side of the unfortunate monarch. He however settled at Dover, and died there February 3, 1682, aged 76 years, and was buried at the Church of St. James, in Dover. He had five sons and one daughter. One of these sons was the father of Simon Yorke, Esq., who settled at Erthig, in Denbighshire, and dying July 28, 1767, left issue the late Philip Yorke, Esq., of Erthig, a man not unknown in the literary world, who died February 19, 1804, aged 61, having married, July 2, 1770, Elizabeth, sister to the late Lord Brownlow, by whom he had issue Simon Yorke, Esq., formerly M.P. for Grantham. Philip Yorke, another of the sons of Mr. Simon Yorke, who came out of Wiltshire, was born about the year 1651, and practised the law as a solicitor at Dover, and became the town-clerk of that borough.

He married a lady of a family of ancient extraction in the county of Kent, and at that time well allied, and possessed of considerable property. This was Elizabeth, daughter and heiress of Mr. Richard Gibbon, of Dover. Lord Chancellor Hardwicke always quartered the Gibbon arms, as may be seen in the Middle Temple Hall, and under the prints of his portraits. From this family sprang the celebrated Edward Gibbon, the historian of the Decline and Fall of the Roman Empire. Mrs. Yorke was the widow of her cousin, Edward Gibbon, Esq., and had by her first husband a son, who died young. She survived till October 17, 1727, and died at the age of 69, having issue by Mr. Yorke one son and two daughters; Philip, the subject of this memoir; a daughter, Elizabeth, who married Mr. Billingsley, a dissenting minister, who afterwards became a clergyman of the Church of England; and another daughter, Mary, who became the wife of Charles Valence Jones, Esq., a barrister of the Middle Temple, and a gentleman of landed property in Cornwall, whose son, Hugh Valence Jones, represented Dover in Parliament.\*

The period of the birth and baptism of Lord Chancellor Hardwicke is thus recorded in a journal, in his own handwriting, of the principal events of his life:—

“Philip Yorke, born at Dover, y<sup>e</sup> first day of Decr. 1690, and baptized on Tuesd. 9 Decr.”

All that appears to be known about young Yorke's father is, that he practised as an attorney at Dover, and was the town clerk there; that he was of good extraction, and was respectably connected. Although there was landed property belonging to the family, his own circumstances at this period are said to have been needy.† We

\* Collins's Peerage.

† Cooksey's Anecdotes Lord Campbell's Lives of the Chancellors.

have no record whatever as to his mental endowments, disposition, or pursuits. For the respectability of his standing in his profession, the office which he held is, at least, some guarantee.

The poverty and even neediness of Mr. Yorke's circumstances (supposing this to have been the case, as has been asserted, but of which there appears to be very great doubt) were no disgrace to him, especially in a profession in which, though honourable industry here may often lead to affluence, the former condition may result from an honest resolution never to resort to any but the most strictly correct means. Here, as in mercantile pursuits, poverty may be caused by strict probity, or, at any rate, might have been prevented by the disregard of it. Unscrupulous practitioners and adroit swindlers are those who are most likely to escape being visited by calamities of this nature, because they are deterred by no compunctions of conscience from having recourse to expedients, which the former would disdain, to avert the evil. The difficulty, indeed, in each station is not so much how to get money, as how to get it by fair means.

If the history of the family of a man of rare endowments is devoid of interest, because it relates to others rather than to himself,—except so far as the supposed possession of certain hereditary qualities may afford us any real knowledge, or lead to any new discovery, as to the transmission of these in families, or serve to illustrate some of the ingenious theories which have been propounded here,—yet, on the other hand, the early history of the man himself, of the growth and formation of his mind, and the expansion and development of his powers, and the various circumstances and influences of different kinds by which any of these may be supposed to have

been affected, is one of the most interesting and instructive parts of his biography. The tracing of early characteristic traits is doubtless one of the most valuable results that can be effected in recording the life of a person of this kind. But these are, perhaps, gems of truth which are the most difficult to obtain; and those which are the most precious are precisely those which are the least likely to attract the attention of persons who would have the opportunity of discovering and preserving them. A correct, clearly defined mental autobiography, by a person of real and distinguished original talent, which exhibited fully the gradual development of his powers, and the mode in which he successfully directed their application, would be unquestionably one of the most valuable contributions to literature which could be rendered, on account of the information which might be thereby gained respecting the phenomena of our mental constitution, and (notwithstanding the variety of persons in this latter respect) the important educational purposes to which it might be applied, and the direct practical use the knowledge so communicated might afford. In the case of the subject of the present memoir, nothing whatever appears to have been preserved respecting his very early years. Nor are we able to ascertain whether at such period he displayed any extraordinary traits of mind or character; whether, like his great predecessor, Bacon, he was regarded as a prodigy from the first; or whether, like others who have subsequently evinced great power, he was remarkable rather for the reverse of this.

Instances have been afforded of some persons of great intellectual endowments being largely influenced in many important respects by the occurrences of their childhood, and by the peculiarities and character of

the places and of the people in and among which they imbibed their first ideas. Of the effect of circumstances of this nature on the mind of young Yorke we possess no account. It is indeed mainly in those of a fertile imagination and sentimental genius, whose minds were bent on the study of nature, and attracted by any striking phenomena which she exhibited, that this has been observable—a class of persons to which our hero was by no means nearly allied, though far from destitute of taste or capacity for enjoyment of the choicest beauties of nature and art. Where the mind is induced to a particular pursuit, or a new turn of thought or chain of ideas has been originated by any of these means, in the persons above alluded to, the event may be one of great importance. Not so, however, is it likely to be in the case of one of mere ordinary susceptibility, especially after he has entered upon, or had in view, the pursuit of so peculiarly unimaginative and matter of fact a study as that of the law. But even in his case such influences could not have been wholly without power, and certainly were not unimportant and undeserving of attention. Thus we may, without resorting to mere speculation on this matter, not unreasonably suppose that the mind and character and even conduct through life of Yorke would be more or less materially influenced by the varied and not unexciting scenes which he must during his childhood have been in the habit of witnessing at Dover, then the leading port for communication with the continent. The constant talk about foreign affairs,—the daily intercourse with France,—the rumours of transactions there,—of threatened invasions from that country,—the dreaded and often reported landing of the Pretender,—the constant passing and repassing of embassies and government despatches, connected with the stirring

events of the day,—and, if we look nearer home, the occurrences connected with his father's professional vocations, on a young and reflecting mind, must almost necessarily have been productive of deep impressions and extensive influence.

The house at Dover in which young Yorke was born, and where his father and mother resided, was standing at the commencement of the present century; and the view of it annexed represents it as it then appeared, when it had undergone very little exterior alteration since it was occupied by the Yorkes. It had, however, been divided into three, and a portion of one of the houses was used as a butcher's shop. Had Horace Walpole been called upon to describe the edifice in question, he might perhaps have intimated an opinion that the conversion of a solicitor's office into a slaughterer's stall was no very radical change in its condition.

At the period of its tenure by the Yorkes, this mansion must have been one of a superior order, and affords of itself a strong presumption against the asserted poverty of its proprietor. Little now remains of this house, and nothing of its external appearance to identify it with that represented in the picture. The greater part has been entirely pulled down, though so late as the year 1824 the centre house of the three into which it was subdivided was standing in the same state as when the Yorkes were its occupiers. Some of it still exists, though exhibiting nothing of its pristine appearance, except two of the middle windows, and one of those on the ground floor. It is now used as a chemist's shop and residence. This is the portion of the building forming the opposite extremity to the part represented in the engraving as a butcher's shop. Mr. Yorke's house stood in Snargate Street, about the middle of it, and on the north side.

No traditional anecdotes of the Chancellor or his family, beyond what the biographical notices of him contain, have been met with in Dover, though diligent inquiry for these has been made. In a public house, called the Silver Lion, is shown an antique room, ornamented with some curious carving, where there is a picture painted on a panel, which is said to be the portrait of old Mr. Yorke, the father of Lord Chancellor Hardwicke, and town clerk of Dover. The name "York" is written over the portrait in question, but from the dress, and the star on the breast, as also from the general appearance of the face of the individual here represented, there can be little doubt that it is not the father, but the third son of Lord Chancellor Hardwicke, who afterwards became Ambassador at the Hague, and was created Lord Dover, whose effigy adorns the Banquet Hall of the Silver Lion.

Mr. Charles Yorke, the Chancellor's second son, in a letter to his father, written from Dover, during a short visit there in the year 1748, thus speaks of the early recollections of this great lawyer which his fellow-townsmen had then treasured up.

"Your Lordship's picture in the Town Hall keeps the best of Royal company, Q. Elizabeth, and K. William ; and I ought not to forget that I visited your old Lares, and as I passed by besought a little of their influence. The mother of Mr. Russel, with whom I lodge, remembers you in your cradle ; Mr. Broadly, before you went to school ; others when you were very young ; and all your townsmen take a pride in tracing the *incunabula vatis*. It may seem trifling to say it, but it flattered me to find, as much of a prophet as you are, that you are spoken of with the greatest honour in your own country."\*

\* Hardwicke MSS., Wimpole.

At an early age Philip Yorke was placed under the tuition of Mr. Samuel Morland, a man of learning, taste, and great classical acquirements, and who is said to have been one of the best and most ingenious scholars of his time. He was a great personal friend of the celebrated Dr. Samuel Clarke, of whom we shall hear further in the course of this narrative. Mr. Morland kept an academy of some reputation at Bethnal Green. It has been asserted that his school was chiefly intended for the education of dissenters, though this does not rest upon any sure authority. If it were so, probably the predilections of Mrs. Yorke, who is reported to have been a presbyterian, had some influence in causing her son to be placed there. Be this as it may, Morland was a man of eminence in his profession. He afterwards became a Fellow of the Royal Society; and in the year 1723, soon after his death, a prospectus was published by his son, also a Fellow of the Royal Society, of a classical dictionary which the former had projected. But what was of more consequence by far than the mere learning of the schoolmaster, he seems to have inspired his young pupil with an interest in, and a love for classical study which he retained through life; and which, as we shall presently see by Morland's letters to young Yorke, the former exerted himself to persuade his pupil to keep up for some time after he ceased to be under his tuition.

It is much to be regretted that there is no record of Philip Yorke's school-boy days, nor any account of his companions at Mr. Morland's, who competed with him in his early efforts, stimulated his labours, and perhaps presaged his future eminence. We do not, however, hear of any other men of celebrity who were educated at this school, which was after all but a private one, and the number of pupils probably very limited. With one

of these, indeed, Samuel Palmer, Yorke maintained a friendship for many years. The only information afforded of Yorke's career as a school-boy is to be gleaned from Mr. Morland's letters. The first of them, being written in the year 1707, soon after Yorke had left school, and when he was a little more than sixteen years old, may be fairly regarded as containing Mr. Morland's real opinion, from his own observation, of his pupil's powers. The latter of them was indited two years afterwards, when the writer must probably have heard from different quarters of the high opinions and extensive expectations entertained respecting his young friend, as Yorke had then commenced preparations for being called to the bar, a step which he was induced to take on account of the notion entertained by those with whom he was connected of his great abilities and peculiar qualifications for that branch of the profession, and to which he is also stated to have been urged by Mr. Morland. As the letters themselves are what mainly serve to illustrate this early part of his history, I give them insertion here. Mr. Morland does not seem to have been a very frequent correspondent. Probably, however, the Latin letters were reserved for state occasions only, as it is hardly to be supposed that even a schoolmaster would adopt this language as his mode of familiar intercourse; and we may infer that the ordinary correspondence (although the luxury of a penny post was not invented until more than a century afterwards) was carried on pretty regularly, though this unfortunately has not been preserved. Besides, it is likely that, as Yorke continued to reside in London, though at some few miles' distance from Bethnal Green, after he left Mr. Morland's, not unfrequent personal communication would be kept up between them.

It may, at least, be gathered from these epistles that at Mr. Morland's school Yorke undoubtedly displayed great proficiency, and that he was a peculiar favourite with his master. Of the former, both Mr. Morland's letters furnish very strong evidence. To the latter, the amiable disposition, easy temper, and probably pliant demeanour of the pupil would, no doubt, as much conduce as his intellectual superiority. Indeed, through life, in each successive stage of his prosperous though varied career, his uniformly kind manners and obliging conduct appear 'o have won for him the regard of all about him; and this quality was unquestionably an important collateral conducement to his success. This, it is said, rendered him a great favourite with the solicitors about the court, and served considerably to soften down the asperity with which, from the jealousy created by his rapid rise in his profession, his contemporaries were at first disposed to treat him. Nor are we at all warranted in supposing that this manner was in the least degree assumed for the purpose of obtaining the good-will and patronage of his clients, or for any other illegitimate object, as the same affable and kindly demeanour was exhibited by him in a marked manner on the bench, both towards counsel and suitors. He displayed it also in the House of Commons, at the Council Board, and in the House of Lords, and to an eminent degree in his conduct when engaged in a state prosecution, for which he was several times complimented; so that we may fairly infer that his manners in this respect were but an index to his real mind and disposition. Among those who were brought into close contact with him,—from his early friend Palmer, whose letter, commencing "My dearest friend," I have here given, to those who were officially connected with him in after life, more especially

the Duke of Newcastle,—he seems to have inspired an extraordinary degree of attachment and confidence, and even affection.

Perhaps, on the whole, these letters of Mr. Morland serve to convey an impression that he had the highest opinion of his late pupil's talents, but very considerable doubts of his industry and assiduity; that he felt persuaded he was capable of attaining distinction, but that he entertained very extensive misgivings as to whether he would really exert himself to gain it.

That this was the real judgment formed by Mr. Morland, I gather alike from the very strong expressions which he uses with respect to his late pupil's talents, which in ordinary cases, whatever he might have thought, a judicious tutor such as Mr. Morland would hardly have done, and the direct appeal to his diligence which he makes, though he never commends him for this. Yorke was probably much indebted to these letters, and certainly followed faithfully the advice they contained. The value which he set upon them is, perhaps, best shown by the simple fact that these, and Palmer's epistle to him, are the only portions preserved by himself of his early correspondence.

“JUVENI PRESTANTISSIMO PHILIPPO YORKIO, S.P.D.,  
SAMUEL MORLANDUS.\*

“Cum non alia potior se mihi sisteret ratio, qua demonstrarem tibi, quantis me perfunderint gaudiis, et intima quasi pertentârint præcordia jucundissimæ tuæ, quibus me nuper beâsti literæ, quam si celeriter rescriberem; vix lecto egressus calamus in manus arripui, quem nulla ingruentium curarum vi et impetu prius excutiendum statui, quam responsum tibi quale quale

\* Harwicke MSS., Wimpole.

exaravero: quas tantopere olim vices meas dolui, eas hodie gratulor mihi plurimum, cui tale tandem contigerit ingenium excolendum. Nullum unquam diem gratiorem mihi illuxisse in perpetuum reputabo, quam quâ te Pater tuus mihi tradidit in disciplinam; cui quanta insit virtutis indoles, quam inexplebilis bonarum literarum sitis, quantum ingenii acumen, cum nemini magis perspectum sit quam mihi, non mirandum est, si futuram tui nominis celebritatem meus præsagiat animus; nec fieri potest, quin tam raras optimi adolescentis dotes depercam. Tum demum mihi placere videor, cum dulcissimam dierum illorum memoriam revoco, quibus *Musis et Apolline multo* (quippe qui à latere tuo nunquam se divelli, patientur) studia liberaliora et ameniora simul tractavimus, iisque artibus et disciplinis instruendas mentes curavimus, quibus instructi paratiores habiliores que ad res tam privatas tam publicas administrandas accederemus. Adest tamen mihi voluptas nec minus vegeta, nec minus viridis, cum ad ea tempora presentione quâdum provolat animus, quibus eos honores consecutus fueris, et ad ea munia admotus, quibus certissimum aditum merita tua aperient munientque; quibus nos etiam feremur inter eos fuisse, qui pro mediocritate nostrâ contulimus aliquid, vel contulisse volumus ad juventutem tuam elegantioribus literis imbuenda. Hæc non ita accepta velim, ut non amplius tibi studiis operam dandam credas, quæ jam acrius certe urgenda impellendæque existimo, si ad lucem, et famam hominum profluere satagis. Caveas, oportet, ne remissis parum tempestive laboribus, ex ipso, quem jam tenebas quasi portu, in altum rejectus pereas, ne flavescentibus ad messem campis, torpore correptus, abjectâque quæ sola restat, demetendi, et in horreum colligendi curâ, nullos tandem lucubrationum tuarum fructus percipias. Ita comparatum est, ut in ædificiis extruendis, ita etiam in

studiis excolendis, ut quæ nondum perfecta et sarta tecta, ut ita dicam relinquis, sponte dilabantur quotidie, et in pejus ruant. Quanto minimo, demum, citra portum intervallo consistas, præcipuè cum adverso flumine nitaris, ad locum, ex quo solvisti, statim referere; nec portum attingere licebit, priusquam spatia omnia illa, affectis jam viribus, et convulsis forsitan navigiis compagibus, remensus fueris.

“Jampridem vides, juvenis præstantissime, de veniâ illa, quam narras, impetrandâ, non amplius tibi laborandum esse. . . Quantæcunque— demum fuissent animi nostri offensiones, quæ nulla quidem fuerant, eas omnes deterisset lepidissima tua epistola, quam quoties lego (lego autem sæpissime) toties accensas et in majus auctas sentio amoris illius flammæ, quo te semper persecutus sum; toties affectuum tuorum, quibus me complecti dignaris, fervoribus admotus, refici mihi, et mirificè levâri videor.

“De rebus publicis nihil accepi dignum, quod tecum communicarem. Hagdonia, proba illa vetula, quam noveras, ante octiduum ad plures ivit. Robertsii, vicini nostri, filiam natu maximam vinculis matrimonialibus intra breve illigandum ferunt. Non est e Pygmæorum gente ille, quem maritum sibi adscire voluit puella illa primaria, licet nondum ad novem pedalem altitudinem se extendat statura, qualem nummulo parvulo à spectatore singulo solvendo ostendi dicunt his diebus Londini, Robertsæ Procus Faringdon appellatur, Mortoni uxoris frater.

“Nondum mihi contigit videre, quam peritum se, et strenuum oratorem præstiterit Oxoniensis ille, qui Malburii laudes e rostris primum apud suos pronuntiatas jam typis evulgavit. Sed nisi madida sit mihi memoria, læva quædam ominata est mea mens, cum titulum legerem in diurnis exscriptum. Cum primum acuratius ex-

cussero, te imprimis participem faciam mei judicii, et literis exponam, quantum insit farinæ purioris, quantum furfuris chartulis istis inspersum sit, ex nostrâ sententiâ.

“ Vides quam amice tecum agam, quamque te mihi unicum amicum, et habeam, et gratulor, qui nullum tecum loquendi finem faciam. Hoc verissime dixero, me nunquam tantum Latini sermonis unâ vice, et currente calamo *de totâ meâ vitâ* illuisse chartis. Sed eo libentius indulsi et dextra mea et penna sua sponte properantibus, ut exemplo meo te hortarer, et excitarem ad crebras literas, et longas etiam ad me mittendas ut prolixæ sint non timendum est, cum id nec per me nec per te quidam licebit.

“ Ashleius, Papilio, Johnidius, Dulcissima Capita, tuis vestigiis insistentes, et ad altiora semper aspirantes, te officiosissime resalutant. Nihil restat, nisi scias velim, me Deum quotidie venerari suppliciter et flexis genibus, ut te ab omnium corporis, tum mentis Labe sospitem præstet et tueatur; ut studiorum tuorum inceptorumque omnium Ducem auspicemque se præstare dignetur. Vale, et *μὲ ἡγυπῶν διατελεῖ*. Dat. ex ædibus Blinbeggarianis III Non. Feb. Anno à nato X<sup>ti</sup>, MDCCVI.\*

“ Salutem dicas velim Patri matrique optimis. Sphalmata, leviora illa quidem, quæ tibi inopinanti [*linea caret*] excelsisse videntur, proximis meis indicabo, quæ, nisi per te steterit, non diu morabuntur.”†

The letter is directed thus :

“ To Mr. Philip Yorke, Jun., these,

“ In Dover.”

Frank,

“ Phil. Papillon.”

\* Old style.

† Samuel Morland to Philip Yorke, a most excellent young man, with all due compliments.

As it seemed to me that there was no better way by which I might show

“ PHILIPPO YORKIO SUO S.P.D. SAMUEL MORLANDUS.\*

“Cum nullas à nobis feriantibus nuper, ab Herculeis plane, quibus cæteroquin distendor, laboribus interquiescentibus literas acceperis; vix recusandum est, quin me

you with what great delight I was filled, and my whole soul enchanted, by that very pleasant letter with which you lately favoured me, than by writing an answer at once; scarcely had I got out of bed when I took my pen in hand, which I resolved should not be laid down on account of any of the cares by which I am oppressed before I returned you some kind or other of an answer.

My condition, which at times I have so much grieved over, to-day I greatly congratulate myself upon, as at length I have had the cultivation of such a genius. I shall always consider that no day has ever shone on me more propitiously than that on which your father entrusted you to my tuition; and, considering your virtuous disposition, which is so very excellent, your great thirst for polite literature, and the powers of your mind, which are to no one more evident than to myself, it is not to be wondered if my mind foretells the future celebrity of your name. Nor can this fail to be realized, unless such rare acquirements in so superior a youth shall become wholly lost. I feel the greatest pleasure at those times when I recall to my mind the sweet memory of those days in which, in company with the Muses and Apollo (since they would never allow themselves to be parted from your side), we followed together our liberal and engaging studies, and endeavoured to inform our minds with those arts and with that learning, being skilled in which we might be better prepared and fitted for the management both of public and private affairs. I feel, however, a no less lively and exciting pleasure when my mind looks forward with a sure presentiment to that time when you will have attained those honours, and been promoted to those offices, to which a certain claim will be established by your deserts; by which also I shall gain the credit of having been one of those who in some small degree contributed, or, at all events, endeavoured to do something, towards storing your young mind with polite learning.

I do not, however, wish you so to regard what I have said, as to lead you to the belief that you have no need of giving yourself any further trouble or pains about your studies, which you ought to think should be all the more earnestly cultivated and applied to, if you are really desirous to attain eminence and fame in the world. You must be particularly careful, lest by relaxing too early in your exertions you lose the harbour which you are already entering, and be thrown back upon the wide waters to perish. Beware, lest even while the fields are ripe for the harvest, you be overcome by indolence, and by neglecting the only remaining task of reaping and gathering into the granary your store, after all you obtain no reward of your toil. As it is in the construction of buildings, so is it also in the pursuit of study.

\* Hardwicke MSS., Wimpole.

in amicis colendis parum diligentem habeas. Quinetiam falsi me reum peragis idque syngrophâ etiam, cum manu meâ scriptum possides, quo mecum apud judicem agas, et omnes mei defendendi rationes extorqueas. Missâ

that what you leave unfinished and out of repair, every day of its own accord decays, and becomes more ruinous. At however little distance you stop outside the harbour, especially when you have the stream to strive against, you are immediately carried back to the place from which you started. Nor will you be able to reach the harbour until you have gone over again all that wide space which you passed before, with diminished strength, and perhaps your bark shattered.

By this time you must have been fully persuaded, most excellent youth, that you have no need to trouble yourself further about obtaining that pardon to which you alluded. How much soever I might have been offended, though in reality no offence has been given to me, all would have been obliterated by your very elegant letter, by which, whenever I read it, and I read it constantly, I perceive the warmth of that affection which I have always felt towards you to be excited and increased; being so often cheered by the greatness of your esteem with which you condescend to favour me, I feel myself invigorated and much consoled.

As regards matters of public interest, I know of nothing which is worth communicating to you. That honest old woman, Hagdonia, whom you used to know, died about eight days ago. They say that the eldest daughter of our neighbour Roberts, is shortly to be united in the bonds of matrimony. He to whom the girl wished to have been united as her husband, is by no means of the pigmy race, though his stature has not quite reached the height of nine feet, like those whom they say are exhibited in London as a sight to spectators for a small piece of money. The suitor of Roberts's daughter is Faringdon, the brother of Morlon's wife.

I have not yet had the opportunity of observing how perfect and how effective an orator that Oxonian has proved himself to be, who has now published the praises of Marlborough, which he first of all delivered from the rostrum before his own private associates. But, unless my memory fails me, my mind augured but ill when I read the title as it appeared in the newspapers. As soon as I have more accurately examined it, I will make you at once acquainted with my decision, and I will state fully in a letter how much in my opinion there is in them of pure wheat, and how much chaff he has mixed up with them.

You see in how sincere a manner I deal with you, and how singular a friend to myself I esteem you, and congratulate you that I never seem to make an end of my discourse with you. This I can with the greatest truth say, that I never before put so much Latin upon paper at one time, and with the same pen. But I have on that account the more freely indulged both my

ergo criminis diluendi curâ, et repudiato negotiorum Patrocinio, ad humanitatem tuam tanquam ad asylum confugi. Nec ab illâ tamen, nisi eximiam esse scirem, et cæterorum hominum modulum supergressam, me veniam consecuturum sperarem. Nescio certe, an recriminando effecturus sim, ut te mihi æquiores judicem præstes. Sed cum non solum centis viminibus, sed asperrimis etiam sentietis manum injiciunt, quibus demergendis non alia enatandi spes ostensa est; ego etiam ad conquendas injurias me confero. Scias ergo velim me graviter tulisse, quod rus te furtim subduxisti, præcipuè vero, quod effigie tuâ manu periti alicujus artificis expressâ, non prius impertire dignatus es, ut quoties eam usurparem oculis, mentem meam non minus tui desiderio, quam densis curarum agminibus acerbata solarer aut lenirem.

“ Ineptire tibi forsân videbor, si pigriores nos factos ad scribendi officia Carriani operis\* expectatione dicam,

hand and my pen, as they hastened on of their own accord, in order that I might, by my own example, exhort and arouse you to send me frequent and long letters. There is no fear of their being prolix, since this can happen through neither me nor you.

Ashley, Butterfly, and Joinny, dearest things, who tread in your footsteps, and are always aspiring after something higher, send you their duty. Nothing remains except that I would have you know that I daily beseech God on bended knees to preserve and keep you safe from every taint, both of body and mind; and to deign to vouchsafe to be the director and guide of your studies, and of everything which you undertake. Farewell, and continue to love me.

*Blindbeggars' Hall, 1st February, 1706.†*

I beg that you will send my respects to your excellent father and mother [a line is here wanting] . . . I will point out in my next letter, which will not be long delayed, unless this happens through you.

To Mr. Philip Yorke, Jun., these,

In Dover.

Frank,

Phil. Papillon.

\* “*Selectarum de Linguâ Latinâ Observationum Libri duo*,” Londini, 1709, in 8vo.

† Old style.

et ab usu Latini sermonis abstinuisse, ut quam paucissima essent à nobis profecta Aristarchi illius obelis confodienda. Quicquid id est, tantæ hujus libri editionem moræ tenuere, quantæ celebratam apud Gallos comœdiam, cui Titulus *Puella*, de quâ post diuturnam moram edita hoc disticho lusit aliquis, qui ingenio inter eos id temporis emicuit.

“ ‘Illa Capellani dudum expectata puella  
Jam post longa tamen tempora venit anus.’ ”

Sed si nondum editur, certo certius appropinquat ut edatur liber ille, quo literatum orbem collustraturum, non tam jactat, quam minatur auctor doctissimus. Quoque errabundos literatores ad rectas Latinitatis semitas revocaturum promittit. Diligentissimus certè in notationibus verborum indagandis, utinam citra superstitionem. Quem tamen cum nondum videre licuit, orationem nostram quamvis incomptam non respues, castigatissimam futuram, cum Linæ istius dentes subierit. Vix alius occurrit, qui de se, suisque scriptis et acumine, magis honorificè sentire videtur, quam Carrianus, nisi Gronovius filius, cujus vocem arrogantem, et præidentem pace tuâ adjungam, “absit,” inquit, “ut non alius sit fructus tot laborum qui ad linguas illustrandas repensi sunt, nisi ut dici possit hanc vel illam hujus vel illius vocis videri esse significationem; et non certo adfirmare possumus hanc esse, non illam.” Qui tamen Gronovius, ut apud doctos constat, humani aliquid non semel passus est.

“Sed de Musis plus satis, quibus tantopere obstrepunt belli et armorum fragores, ut ad cantilenas eorum aures plane obsurduerint. Nec de Minervæ amplius, sed Insularum arcibus expugnandis solliciti sunt omnium animi, quibus nisi brevi potius fuerimus, multum de laudibus, et

existimatione Eugenii decedat apud inperitum vulgus ; licet ii quibus acius judicium, non videre possint quid ex vitio vertendum sit. Lætum tamen hujus obsidionis exitum speramus. Sin minus, concoquenda sunt hæc et magis luctuosa etiam, si Deo ita visum fuerit. Id præcipue optandum est, ut desides jam à multis annis Germanos felix aliquis casus ad spes novas erigat, et ad bellum fortius capessendum, ne, totam molem belli, et virium Flandriam convertant Hostes.

“ Jucundissimus Palmerius literis suis me haud ita pridem compellavit, adeo doctis et elegantibus, ut tantum non præripuerit spem omnem imitandi, et Latine scriptiōnis usu nobis interdixerit. Nos interim studiorum suorum adiutores advocat. Nescio autem quis operæ meæ usus sit in bonæ mentis palæstrâ tam feliciter desudantibus, nisi ut benè currentes voce insuper instigem. Ægrè tandem et invitus manum à Tabula retraho. Sed iniquæ chartæ Limites movent, ut desistam. Parentibus tuis optimis obsequia mea vice tuâ ut deferas rogo, et properatis literis certiore facias, cum me locum, non quem merui, sed magnopere cupio in affectibus tuis tenere. Datæ ex Ædibus Blinbeggarianis IV. Iduum Octobris Anno salutis MDCCVIII<sup>o</sup>.

“ Juveni Præstantissimo

“ PHILIPPO YORKIO,

“ At Mr. Salkeld's,

“ Brook-street,

“ Near Holborn-bars,

“ London.”\*

The Daily Courant of the 21st of March, 1719, con-

\* Samuel Morland to his friend Philip Yorke, with all due compliments.

As you have received no letters from me of late, although I have just been enjoying a holiday and had an interval of rest from the labours with which I

tains the following advertisement, which obviously refers to the house and school of Mr. Morland:—

“The house called the Blind Beggars, with large garden and out-houses, which Mr. Samuel Morland now liveth in, at Bethland Green, and keepeth a great school there, is to be lett the 24th of June next, 1719. You may know further at Collonel Jory's house at Bethland Green.”

Yorke was instructed in mathematics by Mr. William Jones, the father of the celebrated Sir William Jones.

am at other times oppressed, I can hardly deny that I have paid but too little attention towards keeping up my acquaintance with my friends. But, besides all this, you accuse me of falsehood, and you have a promise in my own handwriting by which you can summon me before a judge, and take away every means I have for defending myself. Laying aside, therefore, all endeavours to do away with the charge, and waiving the excuse of business, I fly, as to an asylum, to your charity. Nor, indeed, could I hope to obtain pardon, even through that, did I not know how great it is, and how much beyond that of people in general. I cannot, I am sure, tell whether I shall make you a more favourable judge by recriminating your charges, but, like those who having no other hope of escaping from being drowned, lay hold not only of the smooth twigs but of rough brambles as well, so I venture now to complain of your behaviour to me.

Know, then, that I took it ill that you withdrew yourself into the country without telling me; and, above all, because you did not think it worth while first to present me with your picture, sketched by the hand of some skilful artist, so that as often as I looked upon it I might console and comfort myself, when troubled not less for your loss than by my own too numerous anxieties.

Perhaps I shall seem to you to be talking nonsense, if I tell you that I have been less disposed to write on account of my expecting some of the works\* of Cæcilius; and that I have abstained from my custom of expressing myself in Latin, in order that there might be as little as possible of mine to be exposed to the satire of Aristarchus. However that may be, the edition of this book has suffered as many delays as the celebrated French Comedy, of the name of “La Feme;” upon which, when published after a very long delay, some wit of that time composed the following distich:—

“Since all know that *Le Capelain's young miss*,  
Has been coming for so many years,  
What wonder that on her first night,  
Such a very *old* *miss* she appears?”

But, if it is not yet published, the book is certainly near being brought

\* Two Books of select Observations on the Latin Tongue. London, 1709. 8vo.

Sir Isaac Newton thought highly of Mr. Jones, and took him under his patronage. Mr. Jones also taught Lord Macclesfield and his son, who was afterwards distinguished in this branch, the elements of the science. Yorke was enabled some years afterwards to testify his opinion of Mr. Jones's services, and his gratitude for

out, with which its learned author threatens rather than boasts that he will illumine the polite world, and with which he promises to recall the straggling literates to the straight paths of latinity. He is certainly most active in hunting out the etymology of words, keeping, I hope, within the bounds of credulity. Since, however, I have not been able to see this work, you must not reject my style, rough as it may be, and chastened as it will become by being subjected to the teeth of that file.

I scarcely know of any one who seems to think more highly of himself, and his writings, and of his own ingenuity, than Carrianus does; unless it be Gronovius, the son, whose arrogant and boastful expression, I will add with your leave. "Far be it," says he, "that there should be no other fruit for the many labours that have been expended upon the illustration of language, except that it may be said that this or that seems to be the meaning of this or that word, and that we should not be able to affirm with certainty that this, and not that, is its meaning." And yet, after all, this same Gronovius, as learned men are agreed, himself made mistakes more than once.

But of the Muses we have now had more than enough, against whom the crash of war and arms raises such a din, as quite to deafen one's ears to their songs. And it is no longer the citadels of Minerva, but of the Islands, about whose conquest the minds of all are in anxiety; and unless we shortly become masters of which, much of the praise and character of Eugene will become lost amongst the ignorant multitude, although those who have clearer means of judging, are unable to see what fault can be attributed to him. We hope, however, for a happy end to this siege; but, if this should not be, these, and things still more grievous, must be borne with, if God thinks fit. But above all, we trust that some fortunate event may arouse the Germans from their slumber of so many years to entertain new hopes, and to undertake the war with the spirit, lest the enemy turn the whole weight of their forces upon Flanders.

That very agreeable fellow Palmer\* addressed me not long ago in a letter so learned and elegant, as almost to deprive me of the hope of equalling it, and to put an end to my habit of writing in Latin. He calls upon me to

\* Samuel Palmer, schoolfellow of Yorke, already mentioned, and in after years an occasional correspondent of his.

them, by bestowing on him a sinecure office of £200 a year.

The earliest specimens of Yorke's style of epistolary correspondence now extant, are two letters which were written by him while he was at school at Mr. Morland's. They are on mere matters of business, but serve to display very forcibly in the boy, the clear head and shrewd intelligence in these topics, which so eminently characterized the man. It would also seem, from the knowing manner in which he used the technical terms proper for the occasion, that his attention must have been in some degree turned towards his professional studies while he was at Mr. Morland's. Yorke's talent for forensic argument and legal disquisition descended to him, it appears, from the female side; and the first encounters which he witnessed of this nature, were probably equal in animation to any which he subsequently became a spectator of in Westminster Hall. The letters are written in a small round hand, remarkably neat, and are addressed to his relative, Mr. John Meller, who was a practising barrister.

assist his studies. I know not, however, of what use my aid could be to any one so successfully cultivating his own powers, except in the way of lending my voice to encourage his exertions.

It is with difficulty, and much against my will, that I at last end my letter, but the limits of the paper warn me to stop. I beg that you will carry my duty for me to your excellent parents, and that you will lose no time in assuring me that I hold that place in your affections which, without deserv-  
ing, I yet greatly long for.

*Blind Beggars' Hall, 16th October, 1708.*

To Philip Yorke, a most excellent young man,

At Mr. Salkeld's,

Brook Street,

Near Holborn Bars,

London.

*“ Bethnal Green, Nov. 4, 1706.\**

“ WORTHY S<sup>r</sup>,—Being oblig’d by a command, which I dare not disobey, and emboldened by your many favours ; I have presumed to offer to your perusal a copy of my grandfather’s will, and to desire your judgment in the following case : which please to take briefly thus. The testator, (as you will find,) has left my grandmother tenant for life to a farm called Wansove, not far from Dover, and settled it upon Rich<sup>d</sup> Gibbon, my late brother in law, with many provisoes in case of his decease without issue, which happened several years ago. Since that it has been frequently contested between my mother and grandmother, (not without some heat) whether after my said grandmother’s death, y<sup>e</sup> former be heir to this estate, and can dispose of it at will, or be only tenant for life, as y<sup>e</sup> latter is at present. My grandmother indeed sometimes won’t allow that she is either, but asserts that she has a right only to £30 p<sup>r</sup> annum, and that the article, in which that annuity is mentioned, is of the same force as if my brother were living. But I conceive this will appear to be a mistake.

“ My mother being desirous to be satisfied herein, and to put an end to this dispute, engaged me when I was last with her to crave this favor of you, bidding me assure you in her name y<sup>t</sup> she should esteem it a great obligation if you would interpose your opinion concerning it, because she thought it not proper for some reasons to refer it to my father. I hope S<sup>r</sup> you’l pardon this trouble, and at your leisure honour me with an answer, who shall allways be ambitious to cr<sup>e</sup>ince, that I am

“ Yo<sup>r</sup> most obliged and humble servant,

“ PHIL. YORKE, JUN<sup>r</sup>.”

“ Pray S<sup>r</sup> give my humble service to my cos. your

\* Hardwicke MSS., Wimpole.

sister, and acquaint me in your next letter whether you have seen Mr. Trigarie."

*"Bethnal Green, Tuesday Noon.\*"*

"WORTHY S",—I did myself the honour some time agoe to offer to your perusall a copy of my grandfather Gibbon's will, and desired your opinion on some of y<sup>e</sup> articles of it, for my mother's satisfaction. I should not have troubled you at this time with a repetition of my request, but that being to go to Dover this Christmas I shall be obliged to send my books down by water in a very short time, and would willingly put up y<sup>e</sup> copy of y<sup>e</sup> will with 'em, because that box can't be opened before I come myself. I crave the favour of an answer, and begging pardon for my rudeness remain,

Sir,

Yor most obliged and most humble servant,

PHIL. YORKE, JUN<sup>r</sup>."

"My humble service to my cos. your sister."

This letter is directed—

"For John Meller, Esq., at the Sign of

"The Woolpack, over against the Maypole,

"In the Strand."

It was probably at this period, when Yorke paid his Christmas visit to his parents at Dover, that he left Mr. Morland's school, and when he would be rather more than sixteen years old.

In a small street, running out of Holborn, a little to the east of Gray's Inn Lane, nearly parallel with the upper portion of the latter, and called Brooke Street, an attorney of great intelligence, leading practice, and respectable connection, of the name of Salkeld, about a

\* Indorsed, "Received 11 Decr. 1706." Hardwicke MSS., Wimpole.

century and a half ago, had offices and a residence. This street is now considered as a comparatively humble situation; but at the period referred to, it was one of the principal professional localities in the metropolis. As is now the custom, more especially among the leading solicitors, Mr. Salkeld was in the habit of receiving young gentlemen into his office, who were articulated to him as clerks, with the view of becoming ultimately members of the same profession with himself. It was the distinguished fortune of this gentleman to have among those who were so placed under his tuition, four who eventually attained very high eminence in another branch of the profession. Little, probably, did those who were wont occasionally to resort to Mr. Salkeld's offices, to avail themselves of his professional skill, surmise that, out of the clerks who were about the same period engaged in his employment, there were two future Lord Chancellors, a future Master of the Rolls, and a future Lord Chief Baron. Of these were Jocelyn, subsequently Lord Chancellor of Ireland, and founder of the titles and fortunes of the house of Roden; Strange, afterwards Sir John Strange, and Master of the Rolls in England; Parker, who became Lord Chief Baron of the Exchequer in England; and Yorke, the subject of the present memoir.

Yorke's father, who appears to have been in extensive practice as a solicitor, at Dover, where he had influential connections, and also, as already mentioned, held the important and lucrative office of town clerk, was naturally desirous that his only son Philip should succeed him in his business and appointment. In order to give young Yorke every advantage, Mr. Yorke not only intrusted his general education to Mr. Morland, whose reputation as a scholar at that period was very considerable, but he

determined that he should be articed to a solicitor, in London, of eminence and extensive practice. During the latter part of the time that Philip Yorke was at Mr. Morland's school, his father had been engaged in making inquiries for a suitable person of this description, with whom to place his son, and who might be induced to receive him into his house. In pursuit of this object he addressed the following letter to his relative, Mr. Meller:—

*Dover, Sept. 1706.\**

“ S<sup>r</sup>,—Yo<sup>r</sup> many favors towards us, p<sup>r</sup>ticulerly to my sonne, incourage me to give you this trouble, being yet uncertaine of a Ma<sup>r</sup> for him, & desirous to place him with an eminent attorney in the co<sup>m</sup>on pleas for three yeares, that by the practis of the lawe, he may be better qualified for the study of it. I have directed him to enquire for one whose name I doe not well know, of whom I have a good character, and intreate yo<sup>r</sup> favor, if it be not too troublesome to you, to gett some true information of him, or any other good man of repute and business with whom I might intrust my sonne, and to learne the termes on w<sup>ch</sup> he might be disposed of.

“ I intreate yo<sup>r</sup> assistance herein, with pardon for the trouble, with our hearty services to yo<sup>r</sup> selfe and good sister, and am

• “ S<sup>r</sup>,

“ Yo<sup>r</sup> much obliged cosin and most humble serv<sup>t</sup>,

“ PHIL. YORKE.”

To this letter Mr. Meller replied on the 21st of September, recommending Mr. Tregary. Young Yorke, in his letter already quoted, asks his relative if he had

\* Hardwicke MSS., Wimpole.

seen this gentleman. Mr. Yorke wrote again to Mr. Meller, a few weeks afterwards, as follows :—

*Dover, 6<sup>o</sup> Nov., 1706.\**

“ S<sup>r</sup>,—I rece<sup>d</sup> yors, and returne you my due thankes for yo<sup>r</sup> favor in speaking to Mr. Tregary, and beg yo<sup>r</sup> pardon for the trouble given you therein. I intreate of yo<sup>r</sup> further kindnes that if you can learne that he may incline to take my son at any tyme in ab<sup>t</sup> 6 months, or that you can heare of another trusty man being a good entring clerke, & haveing variety of bussines & an house-keeper, you’l please to informe me thereof, & you’l much oblige,

“ S<sup>r</sup>,

“ Yo<sup>r</sup> very humble serv<sup>t</sup>,

16726.

“ PHIL. YORKE.

“ Pray accept all o<sup>r</sup> due services to yo<sup>r</sup> selfe & good sister, & all relac’ons & fireside.”

From some cause or other, however, the proposed arrangement with Mr. Tregary was not carried out ; and Mr. Salkeld, who has been already mentioned, and who was a brother of Serjeant Salkeld, the celebrated law reporter, was eventually fixed upon as young Yorke’s future master, and he agreed to receive him as an inmate into his house.

It has been erroneously stated that Mr. Salkeld was an intimate friend and the agent of old Mr. Yorke, and that he was induced to take his son without any premium.† For this assertion, however, there appears to be no foundation. In neither of Mr. Yorke’s letters does he mention Mr. Salkeld, or any desire to get his son

\* Hardwick MSS., Wir 10<sup>th</sup>.

† Cooksey’s Anecdotes ; Lord Campbell’s Lives of the Chancellors.

into an office without paying a premium for him, which he of course could not expect to do if he was artied to one who was an entire stranger to him. His only request to Mr. Meller is to find out for him a solicitor of eminence and respectability who was a householder, who would take his son. If Mr. Salkeld had been previously well known to him, or had acted as his agent, all these inquiries would have been unnecessary.

Mrs. Yorke, though by no means herself averse, it would seem, to legal disputation, did not accord with her husband in his views with respect to their son, owing it is said to her presbyterian prejudices, and opposed the project with considerable vehemence, declaring that she wished Philip to be put apprentice to some "honest trade," as she expressed it. In this one instance, however, it is a recorded historical fact that the husband actually came forth a conqueror in the connubial contest; and thus, happily, our hero was rescued from a fate from which his great successor of our age, Lord Eldon, had a similar narrow escape, from the predilections also of a relation; and was saved from being consigned to a station in life where his abilities could have had but little scope for exercise or display. During the period that Yorke continued in Mr. Salkeld's office, which appears not to have been more than two years, we are told\* that he applied himself to business with great diligence, and gained the entire good will and esteem of his master. It is also said, that by uncommon assiduity and attention he made himself thoroughly acquainted with the grounds and principles of the common law. We have no account of the exact course of study he then pursued, though probably the general observation of the routine of business in the office, which was one of very extensive practice, and the perusal of the ordinary law books then in use—more

\* Cooksey's Anecdotes.

especially of the older writers, Coke and Hale, in which he seems to have been remarkably well grounded, and to which he used constantly to appeal—formed his chief sources of legal study. Nor does it appear which of the three distinguished men who commenced their legal education under Mr. Salkeld's auspices, were there at the exact period with Yorke, and by whose remarks, and pursuits, and mode of study, and subsequent success, he might probably have been to a great extent stimulated and influenced.

Yorke's letters were directed to him at Mr. Salkeld's, some time after he had taken steps for qualifying himself to become a member of the bar; so that he may have continued his clerkship with that gentleman during part of the seven years for which students were then required to be on the books of an Inn of Court; or it is not unlikely that Yorke resided at Mr. Salkeld's house, after he had ceased to be connected with the office.

A curious and amusing anecdote is told\* of his career while in his clerkship, which is certainly not uncharacteristic of Yorke. Mrs. Salkeld, who considered herself as his mistress, and who was a notable woman, thinking she might take such liberties with a clerk with whom the writer says no premium had been received, used frequently to send him from his business on family errands, and to fetch in little necessities from Covent Garden and other markets. This, when he became a favorite with his master, and was entrusted with his business and cash, he thought an indignity, and got rid of by a stratagem which prevented complaints or expostulation. In his accounts with his master, there frequently occurred coach-hire for roots of celery and turnips from Covent Garden, or a barrel of oysters from the fishmonger's, and other sundries for the carriage of similar dainties, indicative

\* Cooksey's Anecdotes.

alike of Mrs. Salkeld's love of good cheer, and the young clerk's dexterity and spirit in freeing himself from her attempted domination. Mr. Salkeld observing this, urged on his spouse the impropriety and ill housewifery of such a practice, and thus Yorke's device for its discontinuance proved completely successful. From this circumstance, however, it may surely be rather inferred that Yorke paid a handsome premium for being articulated to Mr. Salkeld, than that he was a "gratis" clerk; as in the former case he might consider that an unwarrantable liberty had been taken with him in requesting him to perform menial offices of this nature. In the latter event, he would have been somewhat restrained from any active resistance to the petty tyranny of Mrs. Salkeld, by which her ire might have been roused to a degree dangerous to a dependent on her husband's generosity or favour.

Strange, who was another of Mr. Salkeld's clerks, and a contemporary of Yorke, used to carry his master's bag for him down to Westminster, and did so to the Rolls Court the very morning that Sir Joseph Jekyll took his seat there as Master of the Rolls; a ceremony which Strange witnessed. In after life, he used to mention this, and to say how little he thought at that time that he should have the option of being Sir Joseph Jekyll's immediate successor, and should actually fill the office eventually.

There is a rough draft of a document among Yorke's law papers, in his own handwriting, which, from the date of it, the reign of Queen Anne, must have been written by him while he was in Mr. Salkeld's office. No letters, however, of this worthy gentleman, or of his amiable spouse, have been discovered, which is not much to be wondered at, considering the opportunities of con-

stant personal intercourse between them and Yorke, which long continued to exist. .

Mr. Salkeld, we are told,\* was so well pleased with Yorke's application, and entertained so high an opinion of his abilities, that he resolved he should quit that branch of the profession for which he was originally destined, and embark on a more ambitious career. We may be assured that he would not have decided on such a measure as this without the fullest persuasion of the wisdom of the step he was taking, and of the capability of his *protégé* to justify this course. For, without supposing, as has been asserted,† that Yorke's father was at this time destitute of the means of bringing up his son to the bar, he nevertheless might have been unwilling, unless he had the strongest inducement, to give up the prospect of the latter succeeding to his practice, and the townclerkship of Dover, which he would probably also have obtained, but all hope of which he necessarily abandoned on relinquishing the pursuit of his father's profession. However, on the 29th of November, 1708, Yorke's name was entered as a student of the Middle Temple, and is thus recorded on the books of that society:—

“*Novembris 29<sup>o</sup> 1708*”.

“Mr. Philippus Yorke, filius et hæres apparens Philippi Yorke, de villa et port de Dover, in Com. Kant., gen., admissus est in societatem Medii Templi specialiter et obligatur una cum,

“Et dat pro fine, £4 0s. 0d.”

His sureties were—

“Thomas Roberts, of Glassenbury, Com. Kant. Bart.

“Thomas Bridges, of the Middle Temple, Gent.”

\* Cocksey's Anecdotes.

† Ibid.

The circumstance of the clerkship to Mr. Salkeld has been denied, though on no certain authority, as will be seen by the following extract from a letter written by Mr. Charles Yorke, second son of Lord Chancellor Hardwicke, to his brother, the second Earl, immediately after their father's death. The denial, however, it will be observed, rests on mere presumption, and the writer only says "I have always *understood* he was never articulated." Probably this statement might have been in part induced by a wish to conceal the once humble position of the founder of the family. But this mere surmise of the son can hardly be allowed to prevail against so many direct assertions of the fact in question, coming from so many different authorities. The point is, nevertheless, not one of very essential importance, as young Yorke's studies, and pursuits, and mode of life would be much the same during the two years he lived with Mr. Salkeld, from the commencement of 1707 to November, 1709, before he entered the Middle Temple, whether he was actually articulated or not. Mr. C. Yorke is clearly in error in supposing that his father only resided at Mr. Salkeld's for the purpose of keeping his terms at the Temple, as he went there two years before he became a member of the latter, and most likely, therefore, the whole assertion was made at a venture.

"The fact of the *clerkship* to Serjt Salkeld is absolutely false. The truth is that L<sup>d</sup> Hardwicke staid with Mr. Morland for his education till 18 years of age.\* His father was a friend of Mr. Salkeld (clerk of the papers of the King's Bench), in whose house and under whose care he lived, till he was 20. At that time he

\* This is also clearly incorrect as Mr. Morland's first letter is dated Feb. 1707, when Yorke was a little more than sixteen.—G. H.

went to chambers in Pump Court, at the Middle Temple, *first*, as a student, and afterwards as a barrister. The notion has prevailed that he was *clerk* to Mr. Salkeld, because he lived with him, when so young, but, I have always understood, that he never was *articled* to him, as a clerk, nor acted with him in that capacity. Serj<sup>t</sup> *Salkeld* (who was brother to the other Mr. Salkeld) might be of some use in his first studies, and attendance of the courts, but only as an acquaintance. The same Mr. *Salkeld* had Mr. Jocelyn (afterwards Chancellor of Ireland,) and Sr John Strange, the late Master of the Rolls, with him. . . . Mr. Morland having insisted with L<sup>d</sup> *Hardwicke's* father that he sho<sup>d</sup> send his son early to the Middle Temple, and bring him to the bar, his residence with Mr. Salkeld was on account of his youth, that he might study there, before he went to live in chambers.”\*

It was in the magnificent hall of the Middle Temple, —a building at once famous for its beauty and its antiquity, and renowned yet more for the rich associations connected with it,—that Yorke commenced his career as a student. Inspired by the illustrious example of the great men who had gone before him in the same course, he himself eventually contributed in no small degree to the glory of the society which enrolled him among its members. Around the walls of the august edifice where he was now wont to resort, are recorded, as having belonged to the same institution, the names of men of whom, without exaggeration, 't may be asserted that they would make any society illustrious, any profession honourable, and any nation renowned.

And, indeed notwithstanding the numerous sneers

\* *Hardwicke MSS., Wimpole.*

and merry witticisms which have been levelled against the present mode of keeping terms for the bar, by the students dining together in the halls of their respective inns of court, probably no system could be framed which would so effectually answer the purpose intended. By this means a wholesome stimulus is excited among those bent on the pursuit of the same profession, who are early brought into intimate contact and familiarized with each other. Men thus become acquainted with the extent of one another's powers, and thereby are they enabled to form a just estimate of their own, and of their adaptation and adequacy for the particular pursuit they are designing to follow. They possess, on the one hand, the high advantage of having the scene in which they are about to be engaged really before them, by the opportunities of attending the courts of law; and, on the other hand, by being so brought together, occasions are afforded them of discussing the different points of interest which have arisen, and of each comparing his own views and observations and notions with those of the others. Thus each gains by the knowledge and experience and intelligence of the other; and the social freedom which the dinner table promotes, contributes alike to banish reserve, and engender good feeling. Indeed, the friendships so formed are often the most desirable and the most durable: the most desirable, because contracted out of a large choice of occasional acquaintance, with men of the same profession and pursuits, and from the best opportunities of observation and report; the most durable, because built on this strong foundation, and cemented by so firm a material as those mutual interests and feelings which thus bind them together. Intercourse in this way commenced, unlike most of that originating in early days, is one which, from the

nature of the profession, has a probability of being continued through life. This custom, indeed, seems exactly to supply what would otherwise be wanting in an educational institution of this kind, in bringing men familiarly together, and effecting an interchange of ideas between them ; while it does not supply what is doubtless far more important,—the preparation by due study for the profession to be pursued,—because the enforcement of this course is rendered needless here, unlike the case of our universities, by the absolute necessity which exists for those who would succeed in this profession, themselves to some extent providing what is here requisite. And if, as in the case of our universities, no class lists, as tests of merit, are exhibited here, yet, on the one hand, these are, to a certain extent, deleterious, as preventing after exertion, and causing those thus distinguished to rely on these mere proofs of what they could do ; while, on the other hand, the whole professional life of an ambitious barrister is a continued contest for a high degree. At all events, the practice itself has, on the whole, undeniably worked well. It is here merely sought to be shown that, if closely and fairly examined, the custom referred to is not only practically efficacious, but also sound in theory.

That a more scientific, and more systematic plan of legal professional education than that which is now followed, is not only desirable, but essential, cannot be denied. It is, however, not the mode of keeping terms, which has its independent advantages, that requires to be altered, but the method of study which is adopted while terms are being kept. This study should not merely be steady and extensive, as is now often the case, but it should be on a regular plan, and pursue a defined course, which is indeed rarely effected. It should commence with the simple elements of the science, and terminate

with the application of these to actual practice. With the latter, the professional education of the legal student at the present day, not only ends, but commences also.

The expediency or in expediency of a university education to a person intending to adopt the bar as his profession, must, after all, depend mainly and intrinsically on his peculiar individual mental constitution. In the case of ordinary minds, the refinement and cultivation which such a course ensures appears absolutely requisite. It is essential to elevate them by instilling noble thoughts and grand ideas ; to inure them, by the study of the great master-writers of antiquity, to the investigation of the higher principles of science of different kinds, more especially those of a moral nature, after which they may descend to the practical application of these in the pursuit of the profession on which they are about to enter. On the other hand, however, in the case of a person, (how rare is the existence of such !), who by nature has been gifted with the power of following profound studies in this exalted way, whose mind would naturally apply itself to the investigation of the grand and leading principles of science, and who of his own accord, without the stimulant of university honours, or the emolument and independence which they may procure, will devote himself to the storing and cultivation of his mind by knowledge and literature, such an individual may perhaps well, and even advantageously dispense with the ordinary collegiate routine of study—provided, of course, that his mind has been sufficiently prepared by the rudiments of education to enable him to go on improving himself, and carrying out what has been commenced. For such a person, the acquirement of a practical knowledge of life will probably be more important, as it is here that he is more likely to be deficient, and this will

possess for him fewer attractions, than the pursuit of the former and higher avocations. On this ground, the commencement of his legal career in an attorney's office may have been more beneficial to Yorke, both professionally and generally, than a regular university education. A real knowledge of life and of human nature, and above all of the actual operation of those laws, the principles of which he acutely and thoroughly studied, was afforded to him by this means, which no other course could by possibility so perfectly have supplied. That a collegiate education is not essential for obtaining even proficiency in the highest branches of learning, it would be as absurd to deny, as to deny the possession of their great acquirements to some of our most distinguished men of genius, on the ground that they did not graduate at a university. On the other hand, it can hardly be questioned, that, both as regards the individuals themselves, and the tone and character and standing of the bar as a profession, as a general rule it is most expedient that members of this profession should be educated at one of these institutions. Both the administration and the practical operation of the law are mainly dependent on the character of the persons who are concerned, whether judically or professionally, in the superintendence of these ; and it must be admitted that nothing has more contributed to exalt the tone of mind of those who are so engaged, than the society and discipline of a university career.

Perhaps, indeed, to individuals in general, the particular advantages of a university are mainly not so much of an intellectual as a moral nature. The moral discipline and tone of feeling and society here inculcated are far more important than the actual knowledge or learning gained, because the former can only be so well imparted

here, while the latter may be acquired with equal efficiency at other places. And even as regards its uses of an intellectual nature, it is rather the mental discipline and training, than storing the mind with information, that constitute the grand advantage of a university career: as many books are studied, not from the knowledge to be derived from them, but on account of the useful mental exercise obtained by the perusal of them. The two branches of study are quite distinct and independent. No one would read Euclid with a view of picking up general information, or the novels of Scott or Fielding as an exercise of mental discipline.

To some, and perhaps no inconsiderable extent, the keeping terms in an inn of court, and the course of study for the bar, may serve to supply the want of university education, both as regards the society into which the student is introduced, and the mental and moral discipline which the pursuit of the law, and the period of preparation and tutorship serve to enforce. The scientific study of the law is one of the finest mental exercises that can be afforded, particularly if accompanied with or well grounded on general knowledge and sound cultivation, especially practice in reasoning of the higher kind. To assiduity in this study, the intellectual society and stirring events in the political and legal world, of which the metropolis is the theatre, form a much stronger incitement than anything in university life. Emulation is also more promoted in this case, as there is more reality in the scenes witnessed, and higher stimulants to study and to forensic efforts, in the combats of the latter kind which are daily witnessed. And as regards the moral discipline of a professional course, the restraint of this nature imposed by the observance and influence of those about us, connected

together in the same pursuit, is unquestionably the most efficient. Many of the habits and notions contracted at a university are no doubt also highly disadvantageous to the law student.

I have been led to dilate thus rather fully on this topic, which cannot be uninteresting to professional readers, as Yorke—who must by all be acknowledged to be one of the first examples, not merely of a great but of a highly intellectual and cultivated lawyer—was not only not indebted to a university education, but followed a course which, in its effects, may be deemed the very opposite to it.

The real business of education is not to store, but to prepare and form the mind; it is the tillage, not the sowing or planting of the ground; its object is to teach men the use of, not to furnish them with implements. Thus considered, the system of our university education, by exercising all the different faculties of the mind together, training the memory, developing the judgment, improving and correcting the taste, and opening the path of knowledge in different directions, and affording a complete notion of the intellectual world by presenting a panoramic view of it, by means of which the particular parts which it may be desired to traverse will be best exhibited, is most philosophical and comprehensive. This is in reality a far better system, more perfect and more successful, because founded on a deeper knowledge of human nature, than the one which has been proposed and even practised in some quarters, which would make education not a system of preparation, but of acquirement; and which embraces in its sphere, and introduces, before the mind is fully developed for the task, what ought to be, and what the other considers, the proper practice and duty of the whole of after life. Thus the

mistake about education, which is made both by the persons here alluded to, as also by those who neglect afterwards to carry on the improvement of their minds by exercising them in the capacities they have thus acquired, is in reality but one; that of considering what is in fact only a means as the very end to be attained. Hence the same error is committed by those who attack our universities as incomplete in their system of education; and by those who, having been educated at them, consider the preparation for learning there afforded, as sufficient to impart to them all the actual knowledge they need possess.

One really important advantage to a professional man of superior talent, is the opportunity that is presented to him by a university education of early distinguishing himself, of at once testing and exhibiting his powers, and gaining a reputation for ability and acquirements, which he starts with and lives upon at his first setting out in the world, but which others have to obtain by slow degrees, and after years of labour and exertion. This criterion is in fact the only actual test of mental power which has been established. But it may be said the solicitors, on whose opinion of a young barrister's acquirements he is dependent, resort not to the university class list, but to the "New Law List," for all that they desire to know concerning him; and that they neither hear nor care about his university honours. The reputation, however, of being a clever man soon spreads, and extends from the circle immediately round him through each successive grade. On the other hand there is the disadvantage as regards this, which the great majority will labour under, of having passed through the university without having thus distinguished themselves, and they therefore become estimated at a certain fixed rank, in many cases below

their real merit, after which the difficulty of acquiring a higher reputation is far greater than if no such decision had been recorded as to the station they were entitled to hold.

One of the most distinguished ornaments of the legal profession in our day, who had attained the highest eminence at the bar, and whose recent departure from among us we are all now deploring—the late Sir William Follett—afforded a signal instance of talents the most superior, and which ensured for the possessor of them the utmost celebrity in public life, both professional and political, failing to acquire for him any university distinction or reputation.

But after all, it must not be assumed that the drudgery of an attorney's office is so utterly fatal to genius, so entirely “that barren soil, wherein no verdure quickens, no salutary plant takes root,” as might from the general nature of the occupations there followed be supposed. No inconsiderable portion of the most distinguished and eminent of our judges, during the last and present centuries, so commenced their career; and some of our most successful advocates and effective debaters in parliament—among them several of the most eloquent and intellectual too—were thus ushered into the legal world. Lord Campbell mentions\* that it is curious to observe that the three “greatest chancellors after the Revolution were the sons of attorneys, and that two of them had not the advantage of a university education.”

The disadvantages to which it might be expected that any person would be mainly subject from commencing his professional career in an attorney's office, instead of studying at a university before entering at an inn of court, are narrowness of views, a contracted habit of

\* Lives of the Chancellors.

mind, and a distaste for intellectual pursuits and literary accomplishments. Yorke, however, as regards his mental endowments, proved equal, if not superior to the mass of men at the bar. Few have taken so comprehensive a view of legal and political subjects as he did, when reasoning on a grand topic of this nature ; and none have exceeded him in the ardour with which, amidst the pressure of exciting professional avocations, he still kept up the cultivation of his mind, and the pursuit of politer studies. The scientific manner in which he treated the immediate subject of his attention is also peculiarly to be observed here. But, not only have those who were thus early emancipated from this supposed thralldom, and who have so eventually been enabled to breathe the purer air of the higher walks in the profession, thus exhibited this intellectual superiority ; but even those who to the end of their days have continued to exist in this asserted unhappy and degrading employment, and to hug the chain that bound them to the earth, have in several instances given proofs of the possession of minds, and intellectual acquirements, of the highest order ; and from this class have some of the most distinguished authors, not only of the present day, but of the last century, been produced. In these days especially, the leading attorneys at least, are gentlemen, both by education and birth ; and Mr. Salkeld, with whom Yorke was placed, was in his time at the head of the profession to which he belonged. The consciousness or fear of any deficiency, from not having received a finished education such as I have here alluded to, may doubtless often have the very beneficial effect of stimulating to constant exertion, in order not only to supply the want, but all appearance or suspicion of its existence, and which will thus be even more than atoned for. This reflection, indeed, is supposed to

have had extensive influence on the mind of Yorke. In others, who have been educated at a university, an opposite feeling may prevail, and they may suffer extensively, as no doubt many do, from considering the advantages which they thus possess, as all-sufficient without being at all followed up. Too many look on a degree, and more especially a place in the class list, as the final object of all knowledge and intellectual exertion ; and in this respect, at least, there may be a direct disadvantage in some cases attendant on a university education ; and which is increased, too, by the success with which it has been in part followed.

Thus university men, particularly those who were there distinguished, will be found not only when at the bar, but in other professions, to be in many instances much below those who have not had the advantages in education which the former possessed, especially as regards general knowledge, scientific acquirements, historical information, and all those subjects which are not within the scope of university education ; though in classical acquirements, and all that they do know, they will probably be observed to be much better grounded, and to understand more thoroughly, than the others do.

Few men brought with them to the bar, and carried through life, more useful and general information than Yorke ; nor was he at all deficient in classical acquirements.

Most interesting would it be, had we any accurate record of them, to trace Yorke's early legal studies, the growth and expansion of his mind, and the effect the former by degrees produced upon it. In those days were no " Blackstone's Commentaries," or familiar treatises to aid young learners as there now are. But perhaps the loss of these was, after all, a disadvantage of a very question-

able character; and though the value of the former of these works is undeniable, both as regards the amount of law it serves to communicate, and much more from the comprehensive, elevated, and scientific view it affords of the matter, and also from the manner in which it leads the mind to the investigation of the first principles of the subject; yet on the other hand, in the case of a young man of real original talent, like Yorke, who would be led spontaneously to apply himself to the study of the science in its highest departments, and in the most philosophical mode,—to go at once to the pure fountains of knowledge, and examine for himself the original springs from which the stream flowed,—such a want as this would not only in the production of such effects be no real disadvantage, but a positive, nay incalculable gain. Not that it would be so to every student of the law. Perhaps, like university education, while for the generality this aid is most desirable and beneficial, in some few excepted instances the dispensation with it is the most advisable course. In Yorke's case, not merely was he thus led to the source of knowledge, but his mind appears, if we may judge from the tone of Palmer's letter to him at this time, to have been directed to philosophical studies, as well as those of a professional nature. He had had the advantage of a good classical education; which he was both urged and disposed to follow up. The influence of Locke at this period was very great, especially among that party, both in politics and religion, with which Yorke was immediately connected. His writings were now in full fame, particularly that very acutely reasoned one, the "Treatise on Government," which would almost naturally be in Yorke's hands; and the most celebrated "Essay Concerning Human Understanding," which, as we shall presently see, is discussed

in Palmer's letter, would have the effect of further inducing the young student to the investigation of the first principles of his subject. Yorke's studies were in progress at the period soon after Locke's death,—the very time when a writer's influence is the greatest; when the most vivid attention is excited towards his works; his virtues are most extolled; and his faults, for a time at least, forgotten or overshadowed.

It may seem very extraordinary, but it is nevertheless true, that although, as I have observed, Blackstone took so comprehensive a view of the study of the law, and directed his readers so much to the investigation of its first principles; and though it has been so much the custom for students of the law to commence their career with his "Commentaries;"—yet, from his day to ours, the subject has been more and more narrowed in its mode of study, and less attention has been paid to the examination of first principles, though Blackstone's work has abated nothing of its pristine popularity. The same may be also observed with regard to Lord Hardwicke's decisions, which were all based on principle, and formed a guide for all his successors. Yet, ever since his time, principle has been more and more neglected, both in the argument and decision of law points, and previous cases have been more and more relied on. This is, however, probably owing to the prodigious increase of legal works and cases, and the much greater certainty with which express decisions in point may be depended on, than the endeavour to lay down or to apply any new principle to the matter in question; as these principles, however well reasoned, must always be to some degree uncertain and fluctuating. It is, indeed, mainly owing to the various ways in which these principles may be applied to particular cases that arise, that so wide a field for argument is

afforded on the different points of each case, and where the ingenuity of the advocate may always find full scope. To a great extent, however, this circumstance must be acknowledged to denote the decline of the study from an elevated science to a common mercantile pursuit;—from a learned profession to a mere mercenary calling. This is in no respect owing to Blackstone, or Lord Chancellor Hardwicke. The only question, indeed, is, how much worse might it not be, were it not for the beneficial influence of the noble “Commentaries” of the one, or the finely reasoned philosophical judgments of the other.

It is, perhaps, not a paradox to assert, with regard to the character of a lawyer, so incomprehensible is his nature, — and in this respect many may deem not unallied to that of his pursuit,—that, in certain points, even his very deficiencies may be of service to him in his career. The absence of genius, the very contempt for eloquence, and even for refinement in reasoning and a high order of philosophical argument, may to some be an advantage, inasmuch as they will be in no danger of being allured from the plodding, practical pursuit of their profession. For such persons, there will be no fear of literary pursuits, or intellectual recreations taking off their attention from their calling; or, by the contrast they afford to the occupations of the latter, causing that to appear dull or wearisome. No doubt, many of the most successful practical lawyers have in this respect had prodigiously the advantage of Lord Hardwicke. But without these tastes and endowments, not only could not a great man, but even a really great lawyer,—one of the rank and genius of our hero,—be ever formed. In some, the mere attempt at eloquence, or at high efforts in reasoning, has rendered them at once

ridiculous. But this would doubtless induce them the more to concentrate their efforts to excel in those departments for which nature adapted them, and ordained that they should move in.

In the case of a few,—Lord Eldon, for instance,—so intense has been their early professional application, that the mind appears to have become, as it were, completely saturated with law. Very laudable as this, and like industry, in the aspiring youth undoubtedly was, yet, without in any degree doubting the absolute necessity of study, and that of a very severe kind, I am nevertheless much inclined to believe that the event of a person becoming a really great lawyer,—I do not mean a mere successful practical advocate, or good draftsman,—depends much more on his mental constitution and faculties, than on any amount of legal learning he may have imbibed, or even, what is more important and more rare, actually digested. A person who is blest with a good legal head, and with acute and powerful reasoning faculties, is by nature inclined to handle every topic in a logical, scientific mode; and seems at once imbued with correct principles for testing and sifting evidence, even though his acquaintance with law be limited to a knowledge of the leading principles of jurisprudence. Abundant instances of this are afforded in the writings of many persons who not only were not lawyers, but who treated on topics quite unconnected with law. Take, for example, many of the arguments and reasonings in Locke, and Butler, and Paley, where the mode in which facts and evidence, and the balance of probabilities, are dealt with, is immensely superior to what many long-practised lawyers ever accomplish, when engaged on corresponding matters in their own professional avocations. So also in the admirable Lectures on Modern History

by the late talented and lamented Dr. Arnold, the manner of discussing historical evidence and proofs, is well worthy of the attention of the first of jurists. The legal arguments which Johnson, who never studied the law professionally, prepared for Boswell, are deserving of the study of every advocate. On the other hand, it is utterly impossible that a person not so gifted by nature, whatever may have been the amount of legal study which he has undergone, can ever hope to attain this high power.

A mere lawyer cannot expect to be distinguished as a great advocate, and it is not often that a great advocate will excel as a lawyer. Erskine, and Brougham, and Mackintosh, were no more qualified to rival Lord Eldon as practical lawyers, than he was to rival them as eloquent philosophical advocates. Where those powers which are more strictly applicable for legal practical pursuits are very moderate in any one, it may often happen that other capacities and acquirements—wit, eloquence, and general knowledge—may be of good service, and should be carefully cultivated. It is quite as impossible for a person not naturally gifted with the power of great practical application and retention, to excel in the departments for which that would qualify him, as for one so gifted, but destitute of the loftier endowments to which I have alluded, to be adapted for attaining eminence in the higher walks of the profession.

No one, indeed, would doubt that eloquence, like poetry, mainly depends on the particular natural powers and constitution of the individual mind; and that a person not happily gifted in this respect would never be able to distinguish himself in this art, however strenuous might be his efforts, or however arduous his studies. But logical skill, and the power of legal

analysis, and of reasoning acutely from first principles, depend, no less than poetry and eloquence, on the natural faculties and adaptation of the mind ; and without the latter, to a moderate extent at least, the greatest exertions after high excellence in this department must be necessarily unavailing. A lawyer, whose only acquaintance with his subject consists in a knowledge of previous decisions on particular points, is to the man whose mind is imbued with the principles of the science, merely what the compiler of an index to a treatise is to the writer of the book itself.

It is to be regretted that there is no accurate record as to the tutor with whom Yorke pursued his legal studies, while keeping his terms at the Temple. There is a tradition in the Hardwicke family that he read with Mr. John Brydges, of Gray's Inn ; but we have no further account of that gentleman, or of the course of study he adopted. He was connected with Yorke, having married his cousin, Jane Gibbon. There can be no doubt that Yorke would have every advantage in making a proper choice of a person to direct his pursuits, from the experience, and extensive acquaintance, and influence of Mr. Salkeld ; and about which the latter of course would not be indifferent, after the high opinion he had formed of his young friend's abilities, and the important step he had taken in entering him at the Temple. The real consequence, indeed, as regards the person in whose chambers Yorke became a pupil, would be not so much with respect to the particular books which he read, as the turn of mind which he gave to his pupil, the principles he inculcated, and the companions with whom he associated him. As regards the latter, he was probably influenced in an important manner by the advice of those who had preceded him at Mr. Salkeld's, whose

adoption of the bar as their profession had been attended with great success, and who were rising into practice. Their examples, which were most encouraging to Yorke, would naturally stimulate him to study and to exertion. They would often meet at Mr. Salkeld's and elsewhere ; and indeed a strong friendship appears to have subsisted between Jocelyn and Yorke, and also between him and Parker and Strange, which was continued through life. Yorke would, of course, be aided in his studies by them ; and his attendance at the courts at Westminster might further serve both to improve him and to kindle the spark of ambition.

Some information as to the mode in which Yorke pursued his early professional studies, may be gleaned from the papers and manuscripts which belonged to him at this period, and which are still in the Hardwicke collection. A great many cases and opinions were at this time copied by him, as also several judgments of the different courts, on important points. He also appears to have been very fond of collecting old law works in manuscript, as several of these are among his law papers, and which, from the date written under his name, must have been obtained during the period of his studentship. There is an ancient treatise on the Court of Chancery, by Sir R. Cotton, in manuscript, with the name " W. Salkeld " written in the title page. I also find a printed copy of Coke's *Abridgment*, in Norman French, the date of which is 1640. It is in size a small octavo, and the leaves of it have been cut out, and pasted in a large quarto blank volume, so as to afford room for notes and comments, which have been very amply supplied both in French and English ; and which contain references to various decisions and authorities bearing upon the different points in the text. The manuscript

thus added is very similar to, if not really in, the handwriting of Yorke, as evinced in the letters already quoted and his early style in general, though the words are somewhat rounder, as would probably be the case in a juvenile hand. Some of the letters, indeed, in the peculiarity of their formation and turns, appear precisely to correspond with those in his epistles. There is no doubt of the book having belonged to Yorke while he was a student, and every circumstance seems to favour the supposition that the annotations in question formed a portion of his labours at this period, and probably largely contributed to store his mind with that knowledge of the older writers and authorities, and that acute perception of the first principles of the science, for the possession of which throughout his career, he was so pre-eminently distinguished. There are also several note books and treatises on different branches of professional knowledge and practice, some of which are evidently in Yorke's own handwriting. Among these is one entitled "Rules of Practice of the Court of King's Bench," which, with a copious index, is entirely in his hand. There are a good many volumes of manuscript reports of cases, some of which are denominated "Cases ex relatione Amicorum." These, it may be supposed, he was permitted to have copied from his friends' reports of them, and on the fly leaf of one of these volumes is written, "Paid for writing to fo. 145 inclusive, 1*l.* 5*s.* 9*d.*" Certain of these manuscript reports are in several different handwritings, though every here and there we find some of Yorke's, in the correction of a passage, or supplying the title to a case, or an explanatory note, which shows the care and attention that he bestowed on them.

A. manuscript treatise, contained in a thin quarto volume, bound in parchment. is headed in Yorke's hand-

writing, "Of Pardons in Cases of Impeachments, written in y<sup>e</sup> year 1717," which was after his call to the bar.

It is a point of considerable interest whether Yorke ever studied the civil law with any one, with the principles of which he appears to have become very early familiar, and to which he constantly referred, both in his arguments while at the bar, and in his decisions as a judge, and which he also strongly recommended to the study of others. His principal instructors here, however, were probably the different treatises of the leading authorities on the subject, with whose profound and masterly productions his mind was fully imbued. There is an old manuscript Latin treatise on the civil law among Yorke's law books, which seems to have belonged to him at this time.

I have been also desirous of tracing out, as far as the materials afforded will now enable me to do, the nature and mode of Yorke's earlier general studies and pursuits. For this purpose I have referred to the books in the library at Wimpole, to ascertain those which he possessed at this period, and to see if these retained any traces, by notes or marked passages in them, of having been particularly the subject of his attention. As regards, however, information of this kind to be derived from his printed books, both legal and general, the search has been less satisfactory than might have been hoped, mainly owing to the following circumstance. As he increased in wealth and honours, the early aids of his studies, in the ordinary copies of favourite works, were replaced by more costly editions; in which respect alone is he open to the charge which has, in every other instance, been most undeservedly made against him,\* of deserting the friends of his youth and the

\* *Vide* Lord Campbell's *Lives of the Chancellors*.

companions of his early struggles. In the present case, however, he gave the best proof in his power of his estimation of the authors of these works, by replacing the inferior copies with the best editions of them. With the living friends of his studies, he maintained a strict intimacy through life, which his acquired wealth and power only enabled him to cement by substantial acts of favour and kindness. With him, indeed, the companions of his early frolics were also the sober solacers of his grey hairs ; and those who watched the expansion of his mind by his well directed and arduous studies,—who saw the youth ripening into manhood,—were those who first shared with him in the rich fruits which those labours produced, and who partook of the honours which his influence and authority enabled him to distribute among them.

Some of the manuscript volumes which belonged to Yorke at this time have, however, been preserved, and serve to evince that the politer pursuits, even in his days of most ardent professional study, maintained their fair share of attention. Among these is a small green album, on the first page of which is written “*p<sup>r</sup>. 2s. 6d., P. Yorke, 1713,*” serving to record at once, what some may think not uncharacteristic of him, the price he gave for the book, and also the time at which he bought it, which was just two years before his call to the bar. In the earlier pages of this volume are several poetic effusions, in Yorke’s writing, by Pope and other poets of the day. One or two of the poems would seem to be Yorke’s own composition, from the fact of the alterations and corrections in his hand, and there is positive proof that he occasionally indulged in attempts of this kind. The corrections, however, in question do not afford conclusive evidence as to the authorship of the poems, as he

appears to have been in the habit very often of changing words and expressions in the productions of known authors, when his taste dictated an alteration. There is another small quarto volume of manuscript poetry, which must have belonged to Yorke during his youth, and in which some of the compositions seem to have been original. And it is worthy of remark that, while his manuscript books of common-law notes are in small octavo volumes, plainly bound in suitable parchment, and his chancery cases are inclosed in covers of sober dark green, rather sparingly adorned with gilt lines, these poetic compositions are bound in a handsome quarto, in the costliest style, with rich red morocco, splendidly adorned with every embellishment of decorative art. Surely a higher compliment to the Muses, and a more marked preference for them over the drier, though more solid and lucrative pursuits he was then intent upon, has never yet been shown!

There are in the library at Wimpole a few classical works, which appear to have belonged to Yorke at an early period. Among them is a pocket edition of Virgil, on the fly-leaf of which are the following words, in the handwriting of Lord Chancellor Somers, "Sum Johannis Dryden, 1685." The book in question was given by Dryden to Lord Somers, who is supposed to have presented it to Yorke. There is also a Horace, an edition of Des Cartes's *Principia Philosophiæ*, and of his *Epistolæ*, and also several of Locke's works, each of which, from the occasional notes in his handwriting, and the marks opposite to particular passages, seems to have been the subject of his close study.

We may also obtain some further knowledge as to the general turn of Yorke's pursuits and studies, and the favourite topics of his mind, from the following letter

which was addressed to him by an early friend, and fellow pupil at Mr. Morland's. The nature, and style, and tone of Palmer's letter, make us the more particularly regret that the one which called it forth is not to be found. But in the absence of the latter, we must make what use we can of what we possess, which in some degree serves, as it were, to reflect the shadow of the other, shows what occupied the mind of the writer, the pursuits he was engaged in, the subjects that most interested him, and the feelings with which in his boyish days he was regarded by his acquaintance. Next to, and in the absence of a man's letters themselves, are the replies to them by his friends, from which we may judge of his character and conduct at the time. This is the case, especially, as regards the letters written by friends on intimate terms with him, and above all by those of his youth, with whom correspondence as equals was carried on, without reserve either of sentiment or of feeling.

In the instance before us, where the letter is a reply to one that Yorke had written, and answers the inquiries, and echoes back the sentiments of the former, it serves to convey to us a pretty accurate general idea of what the other letter was. From this of Palmer's we glean that Yorke's pursuits were at this time of an intellectual nature; that speculative reasoning, the study of Locke, and the contemplation of his theories and opinions engaged him, and that he was not inattentive to the general literature of the day. We also learn, from the express assertions in the letter, that he was deemed a pleasant companion, and that his conversation was agreeable, both which, as indeed the other points I have mentioned, are elsewhere confirmed; and from the affectionate terms in which he is here

addressed, we may also judge of the sentiments with which he was regarded.

“ *Christ Church, November 18th, 1709.\**

“ MY DEAREST FRIEND,—I have taken this opportunity to reply to yours of the 8th inst., that I may the better convince you with how much satisfaction I was filled at the receipt of it, and how great the force of your eloquence has been to lay my anger, and calm my resentment. I am ready to admit the excuse at your delay, and can never entertain the least thought to the prejudice of one for whom I have so entire an affection and respect. I am displeased at nothing but your suspecting my candour, and thinking any apology necessary to me. I assure you that, now I am in satisfaction, I can look back with pleasure on my former disquietude, and find the value enhanced by my eager expectation.

“ I have here little discourse on any of the affairs you are pleased to mention in yours ; and nothing is more pleasant and agreeable than to hear of them from you, from whom I am sure to receive a faithful account, illustrated with the most judicious observations.

“ I have read but little of *The New Atlantis*, and am able to interpret nothing after the history of *Count Fortunatus*. The design seems to be rather to lay open men’s private than public characters, and to discover their secret love intrigues than their more dark designs in policy and state. I wish you would favour me with the key to it, and inform me what evidence there is, or whether the prosecution will be carried on against the supposed author. I need not give you any account of my affairs, since you have seen my last to Mr.

\* Harwicke MSS., Wimpole.

Hinde.\* You from thence may understand that I am engaged in a very different sort of learning from what I have ever been in before. I have read some parts of Mr. Locke, wherein he advances notions very disagreeing to my former ideas of things, and to those which I held most certain and infallible. He carries away my consent with him, I know not how or why; and though I am very little inclined to believe a word he says, I cannot help being persuaded by him. There is such an appearance of reason, that I cannot withhold my assent, though the notions are sometimes so new that I am apt to think there is some latent fallacy, which I am not able to detect.

“I have often thought that no man, in anything where his affections are at all concerned, ever follows the guidance of pure reason; and from thence it proceeds that some things are capable of demonstration, while others, though equally true, are not. Thus, in extension or quantity, which are the objects of the mathematics, nobody is at all concerned. And where no one cares whether a thing be true or false, there every one’s impartial reason directs him. If a man was unconcerned in moral truths, I should agree with Mr. Locke, that they too are capable of demonstration, and should hope with him that the science of morality might be brought to the same perfection. But till the mind is disengaged from these fetters, I see no possibility of its being so far advanced; nor can I think these truths capable of so clear a proof. If it be urged that the things themselves may be capable of demonstration, though our minds are incapacitated to perceive it, I answer, you may as well say that the colour of any body may be showed to a

\* The Rev. Samuel Hinde was the incumbent of St. Margaret’s Church, Dover.

blind man, though he does not see it. For demonstration is a relative mode ; and whatsoever is capable of it, is capable of being made clear and infallibly evident to human understanding. Without this, however true the thing may be in itself, it is not capable of demonstration, to which the inability of the mind to perceive it is as great impediment as either the want of evidence in the thing itself, or the want of a proper medium to prove it by.

“ I hope you will pardon my troubling you with this rude and unpolished thought. It is new from the mint, and experience alone must determine whether it will pass. If either you or Mr. Hinde will think it worth your reflection, and will communicate your thoughts upon it, I shall pay so great respect to your authority, as need no other stamp than your approbation to make it current with me.

“ There are other things about right reason, and the foundation of moral laws, which if you give me leave I will likewise consult with you upon. For I think nothing a nobler employment of the mind, than to consider the actions of men with reference to that eternal rule, which, like God himself, is the same yesterday, to-day, and for ever.

“ But I fear I have interrupted you too long. I can only say, in an admired sentence of Marquis Voiture, that perhaps if I had had more time, my letter had been shorter.

“ Your obliging readiness to perform what I so boldly desired of you, is extremely grateful to me. I beg you would not put yourself to the least inconvenience, and am very willing to wait your leisure. I desire you would direct them for Mr. Price, to be left till called for ; and by the preceding post send me a letter of advice. I need not put you in mind that the best way

of conveying such things is to roll them on a round stick, by which means nothing can break or rumple them.

“I think myself extremely obliged to Sir Thomas Roberts, for his regard to me. Pray give my most humble service to him. My very humble service likewise to Mr. Hinde.

“My dearest Phil. you have my heart, and most constant wishes, that I could enjoy your entertaining company.

“I am yours, with the most entire affection  
and respect,

“SAM. PALMER.

“I thank you for the account of my father’s sermon, of which I have had no other notice. I have not heard from home for some time ; and am glad to understand from you that they are both well.”

The letter is directed thus :

“For Mr. Philip Yorke,  
at Mr. Salkeld’s, att<sup>y</sup> at law,  
in Brook Street, near  
Holbourne Bars,  
London.”

Indorsed,

“Respons. 21st December.”

In the year 1710, Yorke quitted Mr. Salkeld’s altogether, and took some chambers in Pump Court, Middle Temple, in which he resided. It was during the period when Yorke was engaged in pursuing his studies at the Temple, that the letter in the Spectator signed Philip Homebred, on the subject of foreign travel, was written. This bears date the 28th of April, 1712, and is numbered 364, among the papers of that periodical. The author’s object was to ridicule the practice, then very

prevalent, of young men going abroad, avowedly for the sake of finishing their education by a continental tour, while they neglected to inform themselves on many subjects of superior importance, which should be first learnt at home. The folly against which the writer's satire is directed, is illustrated in the story of a widow lady and her son, who is preparing to start on his travels, and whom his mother determines to accompany, but whose mind is quite unformed and unacquainted with the scenes and customs of his own native land. The authorship of this essay has generally been attributed to Yorke, and in many editions of the "Spectator," including those published in his lifetime, it is mentioned as his, without any hesitation being expressed on the matter. It has, however, long been a question of great doubt in the literary world, whether he was the author or not; for, though the above letter has long been imputed to him, it was originally asserted to have been written while he was pursuing his studies at Cambridge University, to which he never belonged. The style is perhaps rather that of a practised writer, than of a young man not much experienced in literary composition. On the other hand, ever since the letter appeared, it has always been reported to be his production, and there is something of his humorous turn and polished style about it; and, as will be seen by subsequent letters, he was a friend of Tickell, who was a frequent contributor to the Spectator. In addition to this, it has been stated that he "at another time, in an occasional address to a friend upon the same subject," referred to Addison's Remarks upon Italy in a very complimentary strain, and also apparently alluded to his own letter in the Spectator. It is however elsewhere shown, that the letter above referred to, as written by

him to a friend, was in reality part of that signed Philip Homebred, though omitted by Addison on account of the personal compliments to himself contained in it. It has, nevertheless, been inserted in some editions of the *Spectator*, and is found in the folio one of that work. But the alterations thus made in the original letter by the conductors of the *Spectator*, are evidence that it was written by a stranger, and not by one of the regular contributors to that ingenious and delightful periodical.

In addition to this, it may be remarked that foreign travel would not be an unlikely subject for Yorke to have written upon, as, from his residence at Dover, his mind must have been frequently turned to this subject, both by seeing families constantly arrive there for this purpose, and witnessing young men preparing to embark. It appears hardly probable that Yorke, of all men in the world, would have been fixed upon as the author of this letter, if he had not been known to be so, as it is the only literary composition which he is supposed to have produced. The christian name of Philip is much too common to have led to his being suspected of the authorship, and was, besides, borne also by the celebrated Lord Chesterfield, who was then in his youth, but who never has been thought of as the writer. Yorke was then a student of the Temple, which probably occasioned the mistake about his being a student at Cambridge. The *Spectator* was at that period much in vogue in the Temple; some of its happiest scenes were there laid; much of its correspondence was dated thence, and several of its leading conductors constantly sauntered among its shades. A great many persons aspired to write a paper in the *Spectator*, which was considered a great literary distinction at that time, and it is not at all improbable that, as Yorke's mind was attentive to intellectual pursuits, and

to the literature of the day, he would be induced to an effort of this nature. During the whole of his life, the authorship was never questioned; and this, perhaps, is real reason why we do not hear of its having been confirmed by any express declaration on his part.

On the whole, therefore, considering the long reputation of Yorke's being the author—though that is not unmixed with doubt, not so great or well founded, however, as to render it worthless as testimony in favour of it being his production,—that the style is really like Yorke's; and the presumption throughout his life time respecting the authorship; I think that, as far as we can judge, we must suppose that Yorke was the writer of the letter in question. Dr. Johnson, whose authority in matters of this sort is of great value where it can be obtained without prejudice, or the desire to contradict some one who had presumed to advance an opposite opinion, always believed Yorke to be the author, but denied that the letter possessed any particular merit as a literary effort, for which, indeed, the subject did not afford any great opportunity. A mere humorous and amusing illustration of a prevailing foible is all that is aimed at, which is well attained. Had the writer attempted any thing in the way of profound investigation, or original thought, or sublime description, and failed in attaining this, Dr. Johnson's sneer against this very unpretending early literary effort would have been less illiberal. His assertion that it is vulgar, is perhaps entitled to some consideration, as coming from so great an adept in the art of vulgarity. Lord Mahon, and many other high authorities, have unhesitatingly mentioned Yorke as the writer of the paper in question: as also did Dr. Birch and the second Lord Hardwicke, who might have been apprised of the fact from the author's own mouth.

Singular it is, after all, that this point should never have been decided during the writer's life, considering especially the numerous men of letters with whom he was in communication. But this, as I have already observed, is a strong proof that it was never questioned then. The piece itself contains no great indications of genius or research, but something of Yorke's style and satirical vein is exhibited. The subject of the authorship is mainly interesting as a now long disputed literary question. And it is also a curious coincidence that Lord Eldon's only literary effort, his prize essay at Oxford, and this early literary attempt of Lord Hardwicke, should both have been on the subject of "foreign travel."

While Yorke was keeping his terms,\* by dining in Hall at the Middle Temple, it is said that he formed an acquaintance with one of the sons of Lord Macclesfield, then Chief Justice of England, who was also a student at the same Inn. I have not been able to find among Yorke's papers any record of an intimacy between him and Lord Macclesfield's only son, Mr. G. Parker, who succeeded his father in the title, and who in later years occasionally corresponded with Yorke. But Mr. Thomas Parker, who was one of Mr. Salkeld's clerks, was a nephew of Lord Macclesfield, and was afterwards promoted by Lord Hardwicke, on account of the favours rendered to him in early life by the uncle. It appears, therefore, not improbable that it was Mr. Thomas Parker, Yorke's colleague at Mr. Salkeld's, and with whom Yorke maintained an intimacy through life, that introduced him to Lord Macclesfield. The agreeable conversation of Yorke had proved very attractive to Parker, and a strict friendship between them was soon formed. We are further told† that during

\* Cooksey's Anecdotes; Lord Campbell's Lives of the Chancellors.

† Ibid.

this period, Lord Macclesfield, who was well acquainted with, and had a great esteem for Mr. Salkeld, applied to the latter to recommend him a young man of respectability and intelligence, to serve as a sort of law-tutor to his sons, and assist and direct them in their studies. As I have already stated, Lord Macclesfield had but one son, who never followed the law as a profession, but who might have been desirous of obtaining a knowledge of the laws and constitution of his country sufficient to qualify him for the duties of a legislator. Whether Lord Macclesfield ever employed Yorke in the above capacity is very doubtful.

However, according to the narrative referred to, Mr. Salkeld recommended Yorke in the warmest terms to his lordship, and he was immediately engaged for the purpose mentioned, and also invited to dine at Lord Macclesfield's table, and treated by him with every mark of approbation and regard. Certain it is that an acquaintance was at this period formed between the Chief Justice and Yorke, which soon ripened into a friendship that continued through life; and that the establishment of this connection proved, as we shall presently see, a most auspicious circumstance for, and had considerable influence in advancing the fortunes of the young student.

The patronage of such a man as Lord Macclesfield, might be urged by some to confer but a questionable degree of credit on the subject of it, if considered in relation only to the merits and virtues possessed by the patron himself. But when we bear in mind that, with all his faults, Lord Macclesfield was ever allowed to be a really decided patron of genuine merit; nay, even that this was so far acknowledged as to be referred to and dwelt upon by his detractors at the time of his disgrace, as the chief point of palliation in his case: and when we

consider, moreover, that, at the period of his extending his patronage to Yorke, the latter was, (according to the accounts already referred to of the circumstances of his family), of all the young students at the Temple one of the very last on whom Lord Macclesfield would have fixed with a view of obtaining any thing by extortion in return for the favours shown him, as both this young gentleman and his relations were then so utterly unable to satisfy him in this respect,—the Chief Justice's patronage of Yorke was not the less creditable to him on account of the failings of his patron, which were in no way connected with his conduct here. His character as a discernor of merit might still be great, notwithstanding his subsequent dishonesty as a chancellor: besides, the manner in which Lord Macclesfield became acquainted with Yorke, and the selection that he is said to have made of him for the very important purpose of directing the studies of his son, are the best proofs that could be given of his opinion of the young student's abilities.

Thus Yorke proceeded in his course, with every stimulant to exertion and enterprise. While his poverty (allowing this to have existed) and a feeling of dependence on others, would urge him to raise himself from these, the opinion that had been expressed of his powers, and his own inward consciousness of their extent, together with the prospect of Lord Macclesfield's favour and patronage, might kindle the highest hopes, and excite him to the utmost to prepare himself for the encounter before him.

## CHAPTER II.

1715—1724.

YORKE CALLED TO THE BAR—HIS FIRST BRIEFS AND EARLY CAUSES—FAVoured BY LORD MACCLESFIELD—CONNECTION WITH MR. SALKELD—YORKE'S RAPID SUCCESS—HIS RIDICULE OF MR. JUSTICE POWYS, AND PARODY OF HIS CHARGE—YORKE JOINS THE WESTERN CIRCUIT—ELECTED A MEMBER OF PARLIAMENT—COURTSHIP AND MARRIAGE—MADE SOLICITOR-GENERAL—BIRTH OF HIS ELDEST SON—INTERCOURSE WITH HIS FAMILY AT DOVER—DEBATES ON THE SOUTH SEA, AND PLAGUE PREVENTION BILLS—YORKE'S SUCCESS, AND GENERAL FAILURE OF LAWYERS IN THE HOUSE OF COMMONS—SIR R. RAYMOND MADE ATTORNEY-GENERAL—EXPERIMENTS ON CRIMINALS—BIRTH OF CHARLES YORKE—LAYER'S CONSPIRACY—HIS CAPTURE, TRIAL, AND EXECUTION—BILL AGAINST BISHOP ATTERBURY, AND KELLY—BISHOP WILSON'S CASE—SIR P. YORKE AND THE MORLANDS—CURIOUS AFFAIR WITH LORD CONINGSBY—LETTER TO MR. PULTENEY.

IN tracing the career of the subject of this memoir from the period of his early life through all the various subsequent stages of it,—and which I am desirous of effecting as correctly and distinctly as the facts afforded will enable me to do,—we have now arrived at that very important epoch, when the faculties, whose development we have been eagerly watching, have attained maturity, and the fruit of those blossoms, whose expansion we have viewed with so much interest, is seen to be ripening, and promises to yield an abundant return for all the care and anxiety, and labour, that have been bestowed.

The degree of success which attends a person's efforts on the stage of real life, often falls very far short of the anticipations which have been formed, either by the

partial judgment of friends, whether parents or instructors, or from observation of the actual proofs of capacity which he has exhibited, or the diligence he has displayed during the probationary period of his youth. Thus as regards the former, the blindness to many deficiencies, and the prodigious over-rating of many qualifications, may serve to produce an entire miscalculation as to a young person's real capacity in the minds of those nearest allied to him, and most anxious about his capabilities. Then many powers which in the child or even the youth make great show, and attract a large share of notice, in the man are hardly regarded; and some of the choicest accomplishments of the scholar scarcely find use in the grown-up person, whose business is with real life. On the other hand, certain of the noblest talents of the mind may find but little opportunity of display in the avocations of youth; and the profounder departments of knowledge may have been then scarcely encountered. Thus also it is with respect to University distinction: many of the honours here attainable are intended not so much as tests of actual ability as stimulants to exertion, and therefore fail as proofs of the former; in which light, however, they are very often erroneously regarded, and extensively relied on.

All these circumstances render the task of calculation on the success of after life, from the data afforded by a knowledge of what has been performed by the youth, one of extreme difficulty and perplexity, and always of uncertain result.

It cannot be doubted that Yorke came to the bar with a mind well cultivated and invigorated by general study and knowledge, and adorned with acquirements of a very varied nature, and that he was also equally well fortified

as regarded the preparation he had made for the profession on which he was entering. He had obtained a sound acquaintance with the principles of law, and he well understood how to apply those principles to actual use. He had devoted himself to the investigation of its first elements in the study of the science, and while under the tuition of Mr. Salkeld must have seen much of the practical working of the system. That he had also exhibited striking proofs of ability of different kinds is not less certain ; and it was probably no disadvantage to him, as regarded the successfully availing himself of the early opportunities for distinguishing himself that might be afforded, that he was not called to the bar until a period of life when his mind had attained full maturity, and his knowledge and experience of the world, and of human nature, had been amply perfected. In the profession on which he was now entering, each of these would be tried to the full.

We shall now shortly see how far Mr. Morland's predictions of his pupil's future eminence were realized ; and the propriety of the step taken by Mr. Salkeld will be soon determined.

On the 27th of May, 1715, Yorke was called to the bar by the Benchers of the Middle Temple, being then in his 25th year. The entry in the books of the Society states that he was on this occasion proposed by Mr. Mulso. Six other students were at the same time called : among them Mr. J. Idle, who eventually became Lord Chief Baron in Scotland, and who was an intimate friend of Yorke. None of the others appear to have obtained any remarkable celebrity in after life.

On Yorke's commencing practice, he took a new set of chambers in Pump Court, Middle Temple, his former ones there serving probably only for a residence.

I have endeavoured to ascertain, as exactly as the sources of information afforded will allow, Yorke's progress at the bar, and rise into full practice. His early law papers are, however, very scanty indeed. It appears from them that he was employed for the Crown as junior counsel in one very important case soon after his call to the bar, being that of the King against Dorrell and others, for endeavouring to raise the Pretender's standard at Oxford and at Bath. It was probably through the influence of Lord Macclesfield that Yorke was retained in this proceeding, which was of course conducted under the direction of the Government. The indictment was drawn by Yorke.

In the year 1716, as appears by the brief among his papers, Mr. Yorke was engaged in a case of some magnitude, which was heard before the Lord Chancellor on the 16th of July—that of Stanhope against Thacker and Lady Hallifax, and others, executors of the late Earl of Chesterfield. We have, however, no account of his conduct in the cause.

There is a letter addressed to him about this time by a client, expressing a very high opinion of his merits, and desiring to retain him in a suit which was to be determined before Lord Macclesfield.

For the purpose of tracing out as nearly as I could Yorke's progress at the bar, I have had recourse to the reports of cases argued and decided in the different courts at that period, two volumes of which were edited by Mr., afterwards Sir John Strange, who had been also, as we have already seen, formerly under the tuition of Mr. Salkeld. And highly interesting indeed is the task of thus examining the first commencement of the labours of one who eventually attained such eminence in his career; of observing his early efforts

and watching his gradually increasing practice and growing success. Even the driest species of literature, the old Law Reports, may thus be made a means not only of instruction, but of entertainment. Strange's Reports seem on the whole to contain the most methodical and logical account both of the arguments and decisions in the cases there reported. In a large proportion of them, however, the names of the barristers who conducted them do not appear. At the time of Yorke's call to the bar, the counsel of leading business in the Court of King's Bench seem to have been Serjeants Pengelly, (afterwards Lord Chief Baron,) Branthwayte, and Whittaker; and Messrs. Reeve and Yates, both of whom were subsequently promoted to the bench.

The first case in which Mr. Yorke's name is mentioned in these Reports, is that of *Drake v. Taylor*, which was argued in the Court of King's Bench early in the year 1718, not until nearly three years after his call to the bar, although it is well known that he very soon obtained a considerable share of business. As, however, those cases only which were of leading importance, or by which some new point of law was decided, are noticed in these Reports, it is still very possible that he might have been in extensive practice, although engaged in no trial of public interest, which only would here be reported, so that the very earliest of his efforts may not be preserved. There is no private record among his papers of his first cause, or any account of the commencement of his attendance at the courts, and success there. This, however, would be of less interest in his case, as he had a good connection to ensure him some business, and was not dependent on mere chance.

In both the two next cases, the one, *Wallis v. Scott*,

being an argument on a demurrer, and the other, *R. v. Ivinghoe*, a question of hiring and service, Mr. Yorke's name appears. In the first of them he was for the plaintiff, having Serjt. Branthwayte opposed to him, and was successful. In the other case he argued, having Denton for his leader, to quash the order; Reeve and Lee (afterwards Chief Justice of England) being opposed to him. The court confirmed the order. In the nine subsequent cases, it is not stated who were the counsel engaged in them.

An important trial in which Mr. Yorke is reported as employed in Trinity Term 4 Geo., that of *Rex v. Bennett*, is the first of Mr. Yorke's in which we perceive that logical system adopted of subdividing the argument into different portions, which afterwards so particularly characterised his speeches; a mode as it were of anatomising the whole of the matter, and analysing the subject thoroughly. Here, as well as in other cases, his reasoning stands out, and is distinguished in a marked manner from that of the other counsel. In this instance he divided the argument into different points, and reasoned on them both from first principles, and also from established precedents, and referred to the "importance to the subject" of a right decision of the matter at issue.

The case of *Rex v. Hare and Mann*, tried in Hilary Term, 5 Geo., and reported in 1 Strange, 146, is remarkable as illustrating still more fully Yorke's mode of argument, and of analysing the facts. He here subdivided his argument into many points, arguing (as before), "first, upon the reason of the thing; secondly, upon the precedent."

In a subsequent part of this case he examined at length into the jurisdiction of the Court of Chancery, dividing his argument here in the same manner, and

numbering the different points in it, placing them under distinct heads. This argument also contained a good deal both of comprehensive and of close reasoning concerning the origin and nature of the prerogatives and power of that Court.

Yorke's argument occupies eleven pages in the folio edition of these Reports. Additional interest is given to it from the circumstance of his having some years subsequently published a work relating to the jurisdiction and prerogatives of the Court of Chancery, and also from the account which he afterwards gave of the case in a letter to a friend, by which the genuineness of this report of his argument will be seen. In his letter he describes this as "a remarkable cause of Sir Robert Walpole's, which passes under the name of *The King against Hare and Mann*. It was made when I was a very young advocate, before I was Solicitor-General. but it is correctly reported; for I remember Sir John Strange borrowed my papers to transcribe, so that the faults in it are all my own. In arguing that cause, which turned upon a critical exception to the return of a writ of *scire facias* in Chancery, I found, or at least fancied it to be necessary to show, that all the various powers of that Court were derived from, or had relation to the Great Seal; and as I had not then seen my Lord Hale's manuscript, I endeavoured to prove that the equitable jurisdiction exercised by the Chancellor, took its rise from his being the proper officer to whom all applications were made for writs or brieves, to ground actions at common law; and from many cases being brought before him in which that law would not afford a remedy, and thereby being induced through necessity or compassion to extend a discretionary one." \*

\* Letter to Lord Kaimes.

A great proportion of the cases argued by Yorke in the King's Bench, were those arising out of sessions appeals, for which an attendance at sessions in general not only prepares the advocate for arguing them, but very often also introduces him to them. Yorke, however, never went to sessions, and succeeded without these advantages.

Mr. Yorke's name appears as engaged in most of the important cases reported during the subsequent terms, but which are not of sufficient interest to demand a distinct notice.

Two circumstances undoubtedly conduced to give Yorke a very great advantage in entering on his career, so far, at least, as regards the opportunity he had for exhibiting his proficiency and powers, and of obtaining a favourable hearing from the court. The first of these was the patronage of Lord Macclesfield, who was then the Chief Justice of the Court of King's Bench, and shortly afterwards became Lord Chancellor; and who is said to have manifested his favour towards his young *protégé* in a very marked manner, so as to excite the anger of some of the older members of the profession. And it is recorded\* that Serjeant Pengelly, in particular, was so disgusted at frequently hearing Lord Macclesfield, when Chancellor, observe, that "what Mr. Yorke said had not been answered," that he one day threw down his brief, and declared he would no more attend a court where he found "Mr. Yorke was not to be answered." That Lord Macclesfield was very partial to Yorke, no doubt can be entertained; and it is also said that he did not lose an opportunity to compliment him from the bench on the learning and skill which he exhibited in his arguments, which it would be satisfactory to see obtained

\* Cooksey's Anecdotes.

the fullest attention from the presiding judge. But that Lord Macclesfield was ever induced unduly to favour him, by giving more weight to his arguments than they deserved, there is no reason to suppose. It has even been asserted by the relator of the above anecdote, that Yorke was at first so far dependent on the countenance of Lord Macclesfield, that when the latter was promoted to the Chancellorship, the former abandoned his practice in the King's Bench and removed into the Court of Chancery. Perhaps the correctness of both these stories, which have been reiterated by Lord Campbell in his *Lives of the Chancellors*, may be best judged of by the fact, which appears on reference to the reports before cited, that though Mr. Yorke's name does not once occur in the cases tried in the King's Bench while Lord Macclesfield presided there, yet the very term that his Lordship was promoted to the Chancellorship, Mr. Yorke is mentioned as being engaged in the Court of King's Bench in the first case in which the name of the counsel conducting it is recorded, being that of *Drake v. Taylor*, already alluded to, as also in the two following cases; and from that period his practice in the King's Bench was evidently large and increasing.

The other circumstance which must be considered as greatly favouring the rise of Mr. Yorke at the bar, was his connection with Mr. Salkeld, who, it can hardly be doubted, would not fail to employ his influence, and the opportunities afforded by his very large professional practice and connection, in advancing the progress of one, whose adoption of the bar as his profession he had been mainly instrumental in promoting.

The real value, however, of the advantages possessed by Yorke, must have entirely depended on his ability to avail himself of them; as neither the favour of Lord

Macclesfield, nor the occasions of appearing as an advocate in court, which Mr. Salkeld's extensive practice and patronage would afford him, could do more than present opportunities of becoming distinguished by the learning and ability with which he acquitted himself when so engaged. The most that an attorney, be his practice ever so large, can do really to forward the progress of a barister is, to insure him a fair chance of displaying the capacities and knowledge with which he is gifted. The united efforts of all the attorneys of all the different courts must be utterly unavailing to advance him to any eminence in his profession, unless he is really qualified to rise. There is, of course, a large share of commonplace ordinary business which they may throw into his hands, and which any person of average capacity and diligence is fully qualified to dispose of; but practice of this kind is more important to him in a pecuniary than a professional point, and can do little towards aiding him in any of the higher walks of the profession. Signing pleas, or handing in motions of course, or conducting common prosecutions, can no more conduce to establish a reputation, than they can serve to test a man's ability for high efforts in his career; albeit, it may be far from unsatisfactory to a junior to find his table well supplied with domestic commodities, in the shape of briefs of this description. A leading attorney connection, such as Yorke had, was, indeed, probably of more importance then than it could be now, when the practitioners in this branch have become so numerous, and business is divided among so many; so that there are very few if any men now at the bar who are entirely without some connection of this sort, either through relationship, or themselves or their immediate friends having an ally of this kind, from the necessity of occasionally employing

a solicitor, who would be ready to return the compliment whenever an opportunity offered.

But the small value of an attorney connection, except as a mere introduction to practice, and as insuring an opportunity for the display of the young advocate's proficiency, is best shown by the large number of those who now come to the bar thus happily circumstanced, and the comparatively small number to whom it proves of essential importance.

An attorney is, however, not the only, and perhaps not the most favourable personage, with whom affinity opens a door to success and advancement. Thus the sons and other relatives of judges, landed proprietors, political leaders, magistrates, bankers, directors of public companies, and, certainly not least, of leading barristers in full practice, are all of them, in many respects, more fortunately placed, especially as regards the chances of opportunities for efforts of the higher kind, than the sons or connections of solicitors. And there are probably few at the bar who will not be ranked under one or more of these classes. But supposing a barrister to be wholly destitute of connection of every kind, which must be a rare instance indeed, there are still abundant opportunities for a man of real talent to make known his powers to the world. The number of law books in every department which are now constantly called for,—the various legal periodicals which are open to all,—the constant opportunities of holding briefs for senior barristers, who are employed in causes which are progressing in several courts sitting at once, and in which case these lucky though over-loaded leaders must necessarily resort to others to conduct a portion of their business for them,—and attendance at sessions and assizes,—must each of them, if duly availed of, lead, sooner or later, to occa-

sions of evincing any extraordinary degree of ability or acquirements with which the hitherto unknown aspirant may be endowed. If the number of barristers has much increased of late, so also have the business for them, and the attorneys by whom they are to be employed. That which really retards men from rising, in most cases, is not the want of opportunities, but of availing themselves properly of these when they do occur. A person of talent and industry can hardly fail eventually to acquire the reputation he merits, though perhaps he may establish it at first among his colleagues only. In due time, however, doubtless this will spread through the professional world as well ; and suitors and solicitors will be ever but too glad to resort to the aid even of an untried advocate when it is shown that he may be relied on with a fair prospect of benefit to a hazardous cause. Without the qualifications alluded to, the utmost favour of the attorney, who has his own practice and credit to maintain, which are, of course, mainly dependent on the success of his efforts, and the judicious selection of advocates which he makes, must, of course, be utterly unavailing.

Whatever may be said as to the advantage, in the first instance, of connection at the bar, which is doubtless very great, yet, on the other hand, it is undeniable that there is no profession, and no ambitious walk of life, where a person is so entirely and solely dependent on his own merits and abilities for his rise as in this. Wealth and family influence, which in the political world are so essential to back up personal qualifications, can here do but little, and the loss of them is no obstacle to ultimate success.

If no profession presents so many difficulties in the way of rising in it, owing to the number of personal disqualifications which are said to exist, and which hinder

the aspirant from obtaining eminence, there is perhaps none for which so many different qualities are available as for this, or in which so many talents and acquirements may be turned to account. Among the number of successful competitors here of all ranks, are men differing as much in character, qualification, and acquirements—and not only as regards the extent but the nature of these—as they do in figure and countenance. Besides which, there are so many different branches of the profession, each varying greatly from the other in the nature of its occupation and requirements.

The grand turning point in a barrister's professional career,—the real change which occurs in his condition,—is that which takes place when from being employed because his client would be useful to him, he is now employed because he is thought useful to his client. From a dependent on others, he at length rises, not only into an independent man, but henceforward he sees others dependent upon him. To the attainment of this all must look forward who desire success in their career. Until this grand point is gained, no certainty can exist of ultimate triumph, or even of further advancement.

Not only did Yorke take due care to qualify himself by hard reading and extensive research before his call to the bar, for the successful pursuit of his profession, but when he commenced practice, he appears to have attended all the different courts, both law and equity, and to have taken very elaborate notes of their proceedings. Among his papers are several note-books, containing very full reports of the judgments on matters of leading importance, which were delivered by the different courts at that time, comprising several by Lord Chief Justice Parker, Lord

Chancellor King, Lord Chancellor Macclesfield, and Sir Joseph Jekyll.

Mr. Yorke, who, by his natural ability and the assiduity with which he had qualified himself for his profession, was well able to avail himself of the opportunities which were afforded him, continued to make rapid progress in his career, and in a short time had as much practice as he could undertake. An amusing anecdote is related, on the authority of the late Mr. Jeremy Bentham, connected with this part of his history,\* which serves at once to show the extent of his success, and the surprise excited by it; and also to display some traits of that humour for which he was distinguished, and his agreeable occasional indulgence in which is several times alluded to in some of the letters written to him by his friends. Mr. Justice Powis, one of the judges of the Court of King's Bench, on one occasion after dinner, when Yorke and several other barristers were present, complimented Yorke, and expressed his great surprise at his having acquired so large a share of business for so young a man; and said to him, "Mr. Yorke, I cannot well account for your having so much business, considering how short a time you have been at the bar; I humbly conceive you must have published some book, or are about publishing something; for look, do you see, there is scarcely a cause before the court but you are employed in it, on one side or other; I should therefore be glad to know, Mr. Yorke, whether this is the case." Such a curious way of accounting for Mr. Yorke's run of business could not but force a smile from him; and it determined him to make the judge such a reply as might put an end to so fulsome a compliment; he therefore told the judge he had indeed some thoughts of

\* Cooksey's Anecdotes.

publishing a book, but that he had made no progress in it as yet ; at which the judge, pleasing himself for having made so happy a discovery, became importunate with Mr. Yorke to let him know the subject of this book ; which put him upon telling the judge, that he had thoughts of publishing *Coke upon Littleton*, in verse, but that he had gone but a very little way in it. This, however, tickled the judge's curiosity still more ; and telling Mr. Yorke that it was something so new, and must be so entertaining, he begged him to oblige him with the recital of a few of the verses ; when Yorke, finding the judge would not drop the subject, bethought himself he could not get rid of it better than by giving, by way of a specimen, something in the judge's own words, and introducing the phrases he himself was in the habit of making use of upon all occasions, let the subject be what it would. Therefore, accompanying what he intended to say with some excuses for complying with the judge's request, Mr. Yorke began with reciting, as he pretended, the following verses :—

He that holdeth his lands in fee  
Need neither to quake nor to shiver,  
I humbly conceive, for look, do you see,  
They are his and his heirs for ever.

Such a specimen as this, it may easily be supposed, was quite enough to satisfy the judge, who could hardly fail to perceive the import of the satire ; while the company present must have been under some difficulty to refrain from open laughter. On several other occasions, Yorke displayed a satirical vein, and a good deal of occasional dry humour, and was much esteemed by his companions for his ready wit and entertaining pleasantry. So complete, however was the deception in this instance practised on Mr. Justice Powis, that it has been said

that he took the opportunity, when he some months afterwards met Mr. Yorke, of inquiring seriously about his progress in the proposed work.

Nor was this the only occasion on which Mr. Justice Powis served to excite the poetical genius and humour of Yorke. The following lines in his own handwriting, with several corrections in different parts, are among his early papers. In some of the verses there is much point and satire; but curious and indeed interesting as this production now is, I greatly fear our legal poet will be considered as entitled only to be classed in the doggrel school of versifiers, by the generality of readers of taste and poetical feeling.

“SIR LYTTLETON POWIS’S CHARGE IN RHYME, 1718.\*

“ I your<sup>t</sup> most humble servant rest  
 You gentry of the Grand Inquest,  
 Or inquests rather, for you be  
 The plural number, at least three.

\* \* \* \* \*

But hearken what you must present :  
 First riot, a most horrid thing,  
*Et contra pacem* of the king,  
 Which don’t suppose there is no harm in,  
 For ’tis rebellion’s cousin German.

\* \* \* \* \*

Next libells, gentlemen present,  
 Which all mistakes for to prevent,  
 I thus define : it is, to wit,  
 Not what is spoke but what is writ,  
 Or printed upon paper sheets,  
 And cry’d by wenches about the streets.  
 A libell easily is writt.  
 No matter whether it has wit,  
 Or truth, for that is not the point,  
 So they can say but something quaint.

\* Hardwicke M. SS., Wimpole.

'Tis easy to find out a lye,  
 To blacken king and ministry,  
 Sans sense, the metre may stand single ;  
 For, if it does but rhyme and gingle,  
 It soon invades the vulgar cars,  
 And to the traytor heart repairs.

\* \* \* \*

Next nuisances, but chiefly naming,  
 Such as is all unlawful gaming,  
 And cheats which hydra-like arise,  
 Sharpers with cards and loaded dice,  
 On s.'ly callys still are sharking,  
 Only to keep themselves from working.

\* \* \* \*

These things, I thought fit to premise ;  
 But you good gentlemen are wise,  
 And of yourselves, I speak sans praise,  
 May know something about highways.  
 For by your faces I forebode,  
 You're knowing on the common road.  
 The weather has been very wet,  
 And very mild withall, but yet  
 The summer was extremely dry :  
 Therefore, if you should chance to spy  
 A coach stick fast, or horse a miring,  
 Present that road without inquiring.  
 For the highways, as sure they should,  
 Are now, or never will be, good.  
 And if they suffer, let such elves  
 Blame not the jury, but themselves.  
 But really, if they are wise,  
 They'll take it but as good advice  
 For to advise them to present.  
 Then let them take it as 'twas meant.  
 And we do often show affection  
 To those that kindly take correction ;  
 For tho' you greatly have offended,  
 We pardon when your ways are mended.  
 Mended I mean, not by the weather,  
 But by materials brought together,

And by men's hands upon 'em laid  
 And smooth'd with mattock and with spade,  
 For otherwise our thanks are due  
 To shining Phœbus, not to you."

It was the misfortune of Mr. Justice Powis to be addicted to blunders to so large an extent, that the Duke of Wharton, who was one of the brightest geniuses of the age in which he lived, though unhappily both for himself and for his country he was at the same time one of the most profligate of mankind, took occasion to introduce Judge Powis into a lampoon, in which the Duke was very severe on several of the judges of that time. He was, however, not wanting in doing justice to the character of such of them as were deserving. In reference to Mr. Justice Powis the following stanzas occur:—

"When Powis sums up a cause without a blunder,  
 And honest Price shall trim and truckle under;  
 When Eyre his haughtiness shall lay aside,  
 And Tracey's gen'rous soul shall swell with pride"—  
 \*                      \*                      \*                      \*

The whole concludes with this couplet:—

"Then will I cease my charmer to adore,  
 And think of love and politics no more."\*

Yorke's success now appears to have exceeded even the fondest expectations of his friends; and Mr. Morland's doubts as to his diligence must by this time have been entirely dissipated. His early struggles in his youth, his witnessing the poverty which we are told prevailed at home, and the feeling that he was himself so far dependent on the liberality of others, would no doubt have a powerful effect in stimulating him to exertion, however indolent he might naturally have been.

\* Cooksey.

This would operate as much to drive him on as ambitious feelings would to encourage him in his career. Many of the most successful lawyers have in their earliest days felt the pressure of poverty, and not a few, perhaps, have been largely indebted to this circumstance. Lord Thurlow's advice to the friends of a young barrister of indolent habits, was to let him spend all he had, then marry and run through his wife's fortune, after which (when no resources remained but from his profession) he might hope for high success.

There is nothing, indeed, much more interesting to observe, than the early struggles of men who afterwards obtained a high degree of celebrity, and whose minds were first fortified by contending with the difficulties which beset their course. Nothing, perhaps, belongs more strictly to the tragedy of real life than this, and in no walk of life are these scenes more vividly displayed than in the commencement of that profession to which our hero belonged. The early hopes at setting out doomed to be so soon blighted,—the ambitious longings,—the disappointment and lassitude, and even despondency, which so often follow,—the sore repining and “hope deferred,” so sickening to the heart,—the long waiting early and late for opportunities which seem ever abundant in the horizon, but to be doomed never to approach nearer—until, as in the case of shipwrecked mariners, all is about to be given up as lost—when at last, quite unlooked for, comes the happy opportunity, and above all (because not unprepared for, though unlooked for) the happy use of it, the triumphant success, and the full tide of prosperity that follows;—these, variously diversified in each case, form the general outline of the different acts of real tragedy, which constitute the early career of many an ambitious lawyer. And to what different causes has

their first success been attributed. A happy humorous hit, a leader oversleeping himself, or a judge being seized with a fit of illness, may be instanced among the circumstances which led to opportunities that conduced to the success of several.

Until a man, whether in the ranks of a profession, or in the world at large, proves his superiority to the multitude about him, he must expect to be opposed on all sides, and at every step he presumes to advance he is looked upon as a pretender and interloper; but when he has once forced his way through the throng, he is immediately welcomed by all as a friend; and the opposition which he so lately experienced is now turned on those who would stand in his way. The strong stream of prejudice, against which his utmost efforts were lately required to enable him to struggle, at length bears him forward almost as irresistibly. Universal homage is done to him. Whatever he utters is wisdom; every common place idea bears the impress of genius; every production of his mind is considered of high value. So it is at the bar, and so it is also with a writer, a poet, and a politician. When this line is once passed, it seems as difficult to fall back, as before it was to effect any advance.

The following extract from an epistle by a friend and brother templar, Mr. Philip Ward, which was written to Yorke about this period, is of interest, as showing the manner in which he was regarded by his acquaintance. The writer of this letter was one of Yorke's early allies, with whom he maintained an intimacy and intercourse through life.

1718.\*

“DEAR PHIL.—I am much obliged to you for yo<sup>r</sup> kind intelligence concerning my chambers; t'was a favor I had

\* Hardwicke MSS., Wimpole.

scarce the vanity to expect from such hands. You say then they appear well on the outside. Cou<sup>d</sup> you but help me to furnish the inside of them with a little of yo<sup>r</sup> spirit, I am satisfied you wo<sup>d</sup> best answer the purpose of tempting suitors, and in such a case they wo<sup>d</sup> be sure of being tempted to their own advantage, whereas now they are only in a fair way of being deceived."

Another letter, which is from the Rev. Samuel Palmer, the father of Yorke's old friend and schoolfellow, Samuel Palmer, proves at least the good opinion that was entertained of Yorke among his friends. It is dated "28 December, 1718," and begins thus :—

"SIR,\*—It is upon presumption on our friendship that I give you this trouble." He then proceeds to ask Yorke to use his interest to obtain a donative in the former's parish, which had been usually held by his predecessors, and was in the gift of the Dean and Chapter of Westminster. The letter concludes thus—

"I do not doubt your goodness, and I hope you will take this application well from me, because I think you know that I would not ask a favour from any gentleman for whom I had not a very hearty, and a very high esteem. I take this opportunity to thank you for your civility to my son, and to assure you that if this fails I shall presume to trouble you on another occasion.

"And shall always be, Sir,

"Your most devoted humble servant,

"SAMUEL PALMER."

"Dean—Lord Bishop of Rochester."—[Dr. Francis Atterbury, of whom a good deal more hereafter.]

\* Harleian MSS., Wimpole.

The rising reputation of Yorke caused him at this period to be sought out by the Government of the day, who were anxious to secure the services of so able a speaker as their political supporter in the House of Commons. Accordingly we find by a paragraph in the Post Boy newspaper of the 2nd of May, 1719, which contains all the account I have been able to collect respecting the election, that "London, May 2, Philip Yorke, Esq., counsellor at law, is chosen a representative of the borough of Lewis in Sussex, in the room of John Morley Trevor, Esq., deceased." The expenses of his election are said to have been entirely defrayed by the Government, whose champion he appeared on the hustings. Indeed, had we the full particulars of this his first election as a member of parliament, it would probably, not be fraught with any very lively degree of interest. Possibly, indeed, the description of the journey down, and of the mishaps by the way, which in the rude mode of travelling then adopted were both frequent and, though not agreeably so, much diversified, on his road to the old "rotten borough," (a species of constituency which, albeit so odious in the eyes of some modern legislators, has been the means of introducing to public life many young men of merit, especially in Mr. Yorke's profession, who might otherwise long, or for ever have remained in obscurity), would be the most lively incidents attendant upon it. A very few words would, in all probability, amply suffice to describe an election which was doubtless in its consequences as important as any that occurred in that Parliament. Suffice it to say that the candidate went down, was proposed, and was elected. The transaction was most likely quite in the *veni, vidi, vici* style, if there can be a conquest without an opponent, or a vanquished foe where only one is concerned. The

electors, however, appear to have been fully satisfied with their representative, and the following address to the noble "patron" of the borough, to whose notice Lord Chancellor Macclesfield is said to have introduced Yorke, at least evidences the very favourable impression that the latter must have produced upon his constituents during his election visit, either by his speeches, his manners, or his conduct, or all together.

"To His Grace, the Duke of Newcastle,  
 "Lord Chamberlaine of His Majesty's Household.\*  
 "May it please yo<sup>r</sup> Grace,

"Wee whose names are hereunto subscribed, the constables and inhabitants of the borough of Lewes, having heard your Grace's letter publickly read, doe not only herein return your Grace our hearty thanks for the honour you have done us in recommending soe fitt a person<sup>as</sup> Mr. Yorke to serve us one of our representatives in Parliament for this town for the present vacancy, butt alsoe beg leave to assure your Grace that wee doe unanimously and entirely approve of him, and shail be ready on all occasions to shew the regard we have to the favour your Grace has pleased to lay upon us.

"Yo<sup>r</sup> Grace's most obliged and obed<sup>t</sup> humble serv<sup>ts</sup>." The following is in Mr. Yorke's own handwriting:

"Subscribed by 132 electors."

Yorke, like many other of distinguished acquirements, who have been brought into Parliament on account of the services they were considered capable of rendering to their country, had no qualification of his own as regards the real property required to entitle him to sit in the House of Commons. As is, however, usual in these

\* Har. v. Yorke MSS., Wimpole.

cases, a wealthy relative enabled him to overcome this difficulty, by granting him a rent charge out of his estate of the amount requisite for this purpose.

The parliamentary debates of this period are but very imperfectly reported, and only those of leading interest and importance are at all recorded; and, in the case of Mr. Yorke, we have several independent accounts of speeches delivered by him on occasions of considerable consequence, which are not here even alluded to; so that when he made his *débüt* as an orator in that assembly cannot now be ascertained.

The first account\* which we have in the Parliamentary Reports of Yorke appearing as a debater in the House of Commons, is not until the 4th of March, 1720, during the discussion on the “ Bill for the better securing the Dependency of the Kingdom of Ireland upon the Crown of Great Britain,” which was sent down from the Lords and read a second time. And a motion being made for committing it to a committee of the whole House, it occasioned a debate. Mr. Pitt first spoke against the bill, saying it seemed calculated for no other purpose than to increase the power of the British House of Peers, which in his opinion was already but too great. He was seconded by Mr. Walter Plummer, who excepted against the preamble of the bill, as incoherent with the enacting part, which was partly owned by Sir Joseph Jekyll, who, in the main, spoke for the bill. Mr. Hungerford, on the contrary side, endeavoured to show that Ireland was ever independent with respect to courts of judicature. And he was supported by Lord Molesworth, Lord Tyrconnel, and some other members. But Mr. Philip Yorke having backed Sir Joseph Jekyll, and the question being put upon the

\* Debate of the Commons. Vol. I., p. 213.

motion, it was carried in the affirmative by 140 against 83, and so the bill was committed to a committee of the whole House.

An event now occurred in Mr. Yorke's life of the greatest importance, not only as regarded his domestic happiness, but which was calculated to exercise the most extensive influence on his intellectual and moral, and, indeed, whole professional and general career. This was his marriage. Great apparent change in character is often produced by this. Feelings and habits must be necessarily more or less affected and moulded by it. The disposition and mind of the person selected, will also materially affect the individual with whom she is so closely united, independently of the change that may be caused in his condition and prospects, and the connection formed with the family with which he thus becomes allied. Every one indeed is more or less influenced by contemporaries and associates, and the more close the connection is, the greater the influence which is produced. Here the connection is the most intimate and constant; and Yorke's character and career were in many respects, as will be seen, extensively influenced in after life by the object of his choice.

Mr. Yorke, in his younger days, is said to have been one of the handsomest men of his time; and it is reported that he took all due care to set off these natural advantages by bestowing great attention on his personal appearance and dress. By this he attracted the notice of the youthful and pretty widow of Mr. William Lygon of Maddersfield, who had died soon after his marriage, the year before. The young lady was niece to Sir Joseph Jekyll, then Master of the Rolls, at whose house she occasionally visited, and where Yorke met her, and a mutual attachment was formed. Yorke accordingly went

to Worcester, and presented to Mr. Charles Cocks, the father of the young lady, and who was a highly respectable, though somewhat eccentric magistrate and country gentleman, who had married Mary, the eldest sister of Lord Chancellor Somers, a letter from his brother-in-law Sir Joseph Jekyll, recommending the bearer as a proper match for his eldest daughter Margaret. On perusing the letter, the old gentleman told Mr. Yorke to leave his rental and writings with him, and he should have an answer without delay; nor could he easily believe, on finding the bearer of this letter was furnished with nothing of that sort, that he was the man his brother Jekyll so strongly recommended to him. On representing his doubts and difficulties to Sir Joseph, he received for answer not to hesitate a moment accepting the present proposal; for that the gentleman who made it, and was now content with his daughter's fortune of six thousand pounds, would, in another year, expect not less than three or four times that sum with a wife. This argument had its effect, all objections ceased, and the marriage took place on the 16th of May, 1719, a few days after Yorke's election for Lewes.\* In the newspapers of the day the lady is mentioned as being a daughter of Sir Joseph Jekyll, but the mistake no doubt arose from her frequently visiting at her uncle's house. She proved an excellent wife to Mr. Yorke, and was very attentive to domestic management, and the economy of her family, on which she is said to have prided herself more than on the intellectual and literary accomplishments which she possessed in a high degree. Perhaps, as regards the qualities of each kind her influence over her husband's mind is throughout his subsequent life to be traced. All the various duties and offices which she was

\* Cool's *ser's* Anecdotes.

afterwards called upon to discharge, both in public and private, she fulfilled with admirable prudence and the highest credit.

Mr. Yorke, on his marriage, did not give up his chambers in the Temple, on account of the expense, as has been asserted by some of his biographers,\* but he still continued to occupy them, and several of his subsequent letters are dated thence. He however took a house in the neighbourhood of Lincoln's-inn Fields, where he and his young bride for some time lived.

The letter which follows was written to Mr. Yorke, by his friend Lord Macclesfield, then Viscount Parker and Lord Chancellor, to congratulate him on his marriage:—

“ *Sherburn, 24th May, 1719.*†

“ S<sup>r</sup>:—I have y<sup>e</sup> pleasure of yo<sup>rs</sup> of y<sup>e</sup> 19th, and very heartily wish you and yo<sup>r</sup> lady joy, and congratulate you y<sup>t</sup> an affair of y<sup>e</sup> greatest importance in life is so happily over: and that you have got a companion y<sup>t</sup> will (I believe and hope it is without doubt,) contribute so greatly to y<sup>r</sup> satisfaction in every stage and circumstance of life. My service to her and all the good family at Belbarre.‡ My prayers are for yo<sup>r</sup> health and welfare. I am with great truth, S<sup>r</sup>,

“ Yo<sup>r</sup> very faithful friend and servant,

“ PARKER, C.

“ I knew of y<sup>e</sup> vacancy you mention this day se’nnight, but have not room yet for Mr. Brookes.”

Old Mr. Cocks, Mr. Yorke’s eccentric father-in-law,

\* Cooksey’s Anecdotes; Lord Campbell’s Lives of the Chancellors.

† Hardwicke MSS., Wimpole.

‡ The country seat of Sir Joseph Jekyll.

wrote a letter to the bridegroom on this occasion, in which he said:—"I am very well pleased with the relac'on contracted between yo<sup>r</sup> family and myne, and hope I shall see you and my daughter at Worcester, as soon as your affairs will permit. . . . I intend to desire y<sup>e</sup> favour of the Master of the Rolls and my lady to come to Worcester, if they will do us the honour."\*

Two letters, on the same happy occasion, were also addressed to Mr. Yorke, by Sir Joseph Jekyll, inviting the bride and bridegroom to Bellbar.

Although Mr. Yorke's practice soon became very extensive, it was nevertheless mainly confined to London, as until the summer of the year 1718 he did not join any circuit; and he is supposed not to have attended, except on special occasions, the quarter sessions of any county or borough. He, however, at length determined to try his fortune in the former department of the profession, and he is said, though erroneously, to have been induced to choose the Western Circuit on account of his wife's connections residing principally in that part of the country: as in the first place they were mainly connected with Worcestershire and Gloucestershire, which belong to the Oxford circuit, and moreover his marriage did not take place until some time after his circuit had been determined. The most probable reason for Mr. Yorke going the western circuit is the connection with Cornwall of the family of Mr. Charles Valence Jones, who had married Yorke's sister, and in which county they had extensive though incumbered estates, and where Yorke seems at once to have obtained professional employment. The business he would meet with on the circuit would be very different to that which principally

\* Hardwicke MSS., Wimpole.

occupied him in London,—arguing cases and points of law before the judges ;—and for which, by constitution of mind, he appears to have been better and more peculiarly adapted, than for conducting causes before juries, which is the main practice at the assizes. He is, however, reported to have had his full share of business at the commencement of his first circuit. He was also employed as the only counsel for the defendant, in a very important case which was tried at Bodmin, on the 5th of August, 1718, relating to a policy of insurance on a vessel called the “Young Stephen,” from Falmouth to Baltimore. No account of Yorke’s efforts in the cause is preserved, beyond his very ample notes and scorings on the brief, and the indorsement on it, which records that he gained the verdict for his client. And here I cannot avoid remarking, that a noble and learned legal biographer, in his late admirable *Lives of the Chancellors*, departs widely from that high tone of feeling by which his writing is mainly characterized, when he insinuates as he does, but for which there is no foundation whatever, that Yorke succeeded on his circuit by methods which were not legitimate ; although, as Lord Campbell observes, this is a matter incapable of proof. That it is incapable of proof there can be no doubt, and simply because it is altogether untrue. The law ever presumes the guilty to be innocent, until the contrary is shown ; and neither reason nor justice would induce any one to do as Lord Campbell has done, and presume the innocent to be guilty, without any evidence whatever to lead to this, and which the whole career of Yorke’s life tends consistently to refute. Besides, Yorke’s success is quite sufficiently accounted for by the reputation he had acquired in London, which must soon

have travelled into the provinces, especially as it would be circulated through the profession, and the London attorneys would be sure to recommend to their country clients an able man, of whose services they might advantageously avail themselves. An insinuation such as is here made by Lord Campbell, is wholly unworthy of his high standing, evincing as he does, in his own character and great professional renown, that arts such as these are not needed to secure the amplest practice ; and that the force of talent, even without the aid that Yorke experienced, and with more competition than he encountered, may raise the possessor to the foremost rank.

In the spring of the year 1720, Yorke, as before, set out on the western circuit ; but on his arrival at Dorchester, he was recalled to London, by the following letter from the Lord Chancellor.

*“ Lond. 17 Mar. 1719.\* ”*

“ S<sup>r</sup>:—The King having declared it to be his pleasure, y<sup>t</sup> you be his Sollicitor-Generall in y<sup>e</sup> room of S<sup>r</sup> W<sup>m</sup>. Thompson, who is already removed from y<sup>t</sup> office, I with great pleasure obey his Majestye’s commands to require you to hasten to town immediately upon receipt hereof, in order to take y<sup>t</sup> office upon you. I heartily congratulate you upon this first instance of his Majestye’s favour, and am with great truth and sincerity, S<sup>r</sup>,

“ Your faithfull and obedient servaut,

“ PARKER, C.

“ Pray give my humble service to my L<sup>d</sup> Chief Justice King, and Mr. Justice Fortescue.”

The above letter is directed,

“ To Philip Yorke, Esq., Counsellor at Law, and  
Member of Parl<sup>t</sup>, at the assizes at Dorchester.”

He also received a letter from his friend Mr. Secretary Craggs, on the same subject.

*“ Cockpit, March y<sup>e</sup> 17th, 1719-20.\**

“ DEAR S<sup>r</sup>:—You will be informed from other hands of what has happened between the Attorney and Solicitor-General. In the squabble the latter has lost his employment, and the first I believe will not succeed in his recommendation of Mr. Denton to be his successour : for I believe the King has resolved to appoint you, which I am glad of for his service, and for my particular satisfaction, who am entirely your most faithful humble servant,

“ J. CRAGGS.”

A violent dispute had occurred, it seems, between the Attorney-General, Mr. Lechmere, and the Solicitor-General, Sir W. Thompson, which ended in the latter being obliged to resign. Mr. Lechmere wished to have appointed Mr. Denton to succeed Sir W. Thompson, who was of much longer standing than Mr. Yorke, for whom the Lord Chancellor† appears to have used all his influence with the King, and who was accordingly selected, and sworn in on the 22nd of March, 1720.

Great dissatisfaction is said to have been evinced, and not unjustly so, it must be allowed, at the promotion of so young a man over the heads of many of his seniors well able to fill the office ; and considerable odium was in consequence excited against the Chancellor as well as against Yorke himself, but which the latter, by his kind demeanour and good bearing, managed soon to overcome.

\* Hardwicke MSS., Wimpole.

† Lord Mahon states that Mr. Yorke was made Solicitor-General by Stanhope ; but it does not appear on what authority this is asserted.

It cannot, however, be denied that Mr. Yorke's extraordinary ability and rapidly increasing practice afforded, to a certain extent, an apology for the Chancellor's preference of him on this occasion; and that his subsequent distinguished success in this office supplied an ample excuse for this proceeding. He who, although a mere novice in his profession, was not only able to contend with but to overcome in arguments of the first importance Serjeant Pengelly and the other leaders at the bar, ought not in fairness, on account of his youth, to have been deprived of those rewards, to his desert of which his youth had formed no impediment. The appointment was legally and constitutionally vested in the Chancellor, who alone was answerable for its being properly disposed of; and no one could say that the choice was either a bad or a corrupt one.

From the precedency annexed to the post he had now arrived at, Mr. Yorke was called upon to take the lead, and to conduct all the causes he was employed in. The suitors at first hesitated about committing themselves to so young and inexperienced an advocate; and he was, on that account, left out of most of the important causes then depending. But the influence of the attorneys, we are told, with whom he was as much a favourite as with the Chancellor, his own indefatigable industry and application, the gentleness of his manners and insinuating complacency of address, soon getting the better of those prejudices, he rapidly came into full business at the bar.

From the constitution of his mind, Yorke was probably naturally better fitted for a leader than for a junior. Many of his principal powers and qualifications would be quite lost in the latter capacity, and could only be displayed to full advantage in the former. Knowledge of principles, reasoning power, eloquence, discrimination, and all the

great resources of the mind which enable the leader to distinguish himself, in the junior have no opportunity of being evinced, in whom an accurate acquaintance with the details of the case, and a knowledge of the legal decisions bearing upon it, are mainly expected. Yorke, accordingly, seems to have gained far more credit as a leader than as a junior. While in the latter position he appears to have been distrusted and underrated, in the former he astonished and delighted all who confided to him their suits. The greater the undertakings he engaged in, the greater did he prove himself by his mode of conducting them. In some ordinary cases he seems not to have been successful. It has, indeed, happened that several great lawyers, who have been eminently distinguished as leading counsel, as juniors either failed, or, at any rate, acquired no celebrity while acting in this subordinate situation. This was more or less the case with Lord Mansfield, Lord Camden, and also Dunning.

On the 2nd of April, 1720; Mr. Yorke was re-elected member for Lewes, and soon afterwards he received from His Majesty the honour of knighthood. He was subsequently chosen one of the benchers of the Middle Temple. On the 19th of March, 1720, as appears by one of her husband's letters, "Mrs. Yorke was deliv<sup>d</sup> of a fine boy." This young gentleman was named Philip, after his father, and eventually succeeded to the titles and estates of the latter.

We find the following letter addressed to the new Solicitor General by his early friend Palmer, congratulating him on his promotion, and acknowledging that the writer himself was the cause of the correspondence, which had not of late been kept up between them, being broken off, though Yorke was the one to renew the intimacy.

*“ Oxford, March 29, 1720.\**

“ S<sup>r</sup>,—I beg leave with all respect to congratulate you upon the honour His Majesty has been pleased to confer upon. I do it with the greatest sincerity, & I am sure you have no friend that rejoices more than I do, in that high character & reputation to which your distinguished merit has raised you in the world. It was once my happiness to have some place in your friendship, & I ought to ask pardon for breaking the correspondence; but I will rather take your kind visit the last summer for an argum<sup>nt</sup> that you have forgiven me. I knew your time must be valuable, & as I should be wanting in that respect I ought ever to bear towards you, if I did not express the pleasure I take in your advancem<sup>nt</sup>, so I will detain you no longer than to assure you of my heartiest wishes that your success may be answerable to your deserts, and then you can’t fail of attain<sup>g</sup> the highest honours of that robe, of which you have already appeared so great an ornament. I am, Sir,

“ Your most respectful, humble servant,

“ SAMUEL PALMER.”

The Solicitor-General’s friend Jocelyn, who had been a colleague of his at Mr. Salkeld’s, wrote a letter to him from Dublin on the 28th of February, in which he stated,—“ My L<sup>d</sup> Ch. Baron has let me know how much I am indebted to you for your late favour in my behalf to his Grace the Duke of Grafton, for which I return you my best thanks.”†

Mr. Yorke, the father of the Solicitor-General, died at Dover on the 18th of June, 1721, at the advanced age of nearly seventy. I do not find any correspondence between this gentleman and his son among the latter’s papers;

\* Hardwicke MSS., W. 10. 1. 1.

† Ibid.

but several letters written to Sir P. Yorke from Dover, from the time of his call to the bar, contain references to his family there, and messages from them to him, or occasional postscripts, such as the following:—"Your father and the rest of the family are well;" "All your good family over the way are well."

Before Sir P. Yorke had been made Solicitor-General, the Recordership of Dover was conferred upon him,—a piece of preferment which he prized highly, and retained through life. The duties of this office occasioned him to pay frequent visits to his native town, and afforded him opportunities of intercourse with his relations there. In a letter to him about holding the sessions, which was written by an officer of the corporation after Sir P. Yorke became Solicitor-General, it is stated, "All your good family is well, and in great expectation of seeing you. Mrs. Yorke says she wrote you last Sunday, and hopes it came safe."

Some abuse has, indeed, been heaped upon Sir Philip Yorke by an anonymous correspondent of his biographer Cooksey, on account of the asserted neglect by the former of his needy relations, especially of his brother-in-law, Mr. Jones, who died in prison.

Although there is no direct evidence as regards the real state of this matter, yet the family correspondence serves to throw a good deal of light upon it, and from this we may infer pretty correctly what the real circumstances were. With Mrs. Jones Yorke appears to have been in constant correspondence. Her letters are certainly written in a somewhat formal style for those of a sister to a brother, beginning, as they invariably do, "Dear Sir," and ending "your most affectionate sister, and humble servant." Whether Yorke's replies commenced with "Dear Madam," we are prevented from

ascertaining, as none of them have been preserved. Mrs. Jones's letters to her brother are, however, full of expressions of affectionate feeling; and, what is more important in the present case, the epistles both of herself and her unfortunate husband always abound with acknowledgments of the many substantial acts of kindness rendered to them by their rising relative. The following is a specimen of one from Mrs. Jones to Sir P. Yorke:—

“DEAR SIR,\*—I take the liberty to enclose my receipt to Mr. Tench, and to make my grateful acknowledgements to you for all your favours and goodness to me. I confess the number of them oppress me, when I consider it will never be in my power to make any return but thanks. Yet I am persuaded there is a pleasure attends doing good and beneficent actions, which none but those happy minds who have both the power and inclination to do so can partake of. May it be your lot now and for ever to experience it. I hope Mr. Jones will do all that's in his power towards settling his affairs now he is in Cornwall. No intreaties of mine have been wanting, if they were of any avail to further his doing so. All friends join with me in due respects to yourself and family. I am ever,

“Dear Sir, y<sup>r</sup> most affectionate sister

and humble servant,

M. JONES.”

This certainly is not the letter of a person who had been neglected, and cruelly treated by her correspondent. But there are others, some from Mr. Jones himself, which clearly show on the one hand that Sir Philip Yorke had been most liberal in his pecuniary assistance to Mr. Jones, and, on the other, that the latter's mis-

conduct and dissipated habits, from which his friends were in vain endeavouring to reclaim him, were the real cause of all his misfortunes. In another of Mrs. Jones's letters to Sir P. Yorke, referring to one of her husband's rash adventures, she says, "My mother has informed me of an affair which has given me a most inexpressible concern and surprise, for I really believed since you were so kind to let Mr. Jones have the last sume of money, his circumstances were perfectly easy."\* It appears that on one occasion Sir P. Yorke advanced his brother-in-law money even against the wishes of the latter's friends. In another instance, the proposal to supply money to this unfortunate man, is shewn to have originated not with himself or his sister, but Sir P. Yorke; but both his wife and sister seem to doubt whether it would be of any real use to him. Mrs. Jones, in the letter stating this says, in reference to her indiscreet and indigent spouse, "he ought not to think much of any inconvenience he may labour under, it being the consequence of his own mismanagement . . . I hope he will purchase some prudence by parting with some of his fortune." In the same letter Mrs. Jones acknowledges a present of some plate from Sir P. Yorke to her little boy, Hugh Valence Jones, to whom Sir P. Yorke had stood godfather, and of whose connection with his rising uncle we shall hear much more in the course of this narrative. On another occasion the Solicitor-General makes young master Jones try his fortune in a lottery ticket, for which, perhaps, he would be censured, for cultivating in him so early a spirit of speculation. Mrs. Jones in a postscript to one of her letters to her brother says, "Pray be so good to keep my boy's money to try his fortune in another lottery, when there shall happen to be one."

\* Harcourt MSS., Wimpole.

From the manner in which Sir P. Yorke's conduct with regard to Mr. Jones has been misrepresented by the writer alluded to, we may judge how far the same authority is entitled to credit in those instances where ample materials to furnish a complete contradiction to his assertions do not now exist.

With his mother Sir Philip Yorke appears to have carried on a constant correspondence up to the time of her death, which took place in 1727, though only her letters to him have been preserved. The following may serve as a fair specimen of them :—

“DEAR SON :\*—I received your last kind letter, and hoped by this time to have been certain of seeing you here ; but I understand by yours to the towne clarke, and also by my son Jones, you cannot yet fix upon any time. I hope your business and private affairs will not be so pressing but that you may find a few days before the end of the vacation to see your friends att Dovor, and to look into those little matters that are between us. I do very earnestly desire to see you, and wish I may not be disappointed any longer. I desire to here from you to know when I may be so happy to expect you ; I have nothing more to add but that all friends with me are well, and send there best respects to you. My kind love and hartly prayers for your happiness attend both you and yours.

“ I am your most affectionate mother,  
 “ July 12th.”

“ ELIZ. YORKE.”

In another of her letters to her son, which seems to have been written some time after the preceding, Mrs. Yorke says—

\* Hardwicke MSS., Wimpole.

“I have been much concerned at not seeing of you in so long a time, and do assure you it is what I do the most earnestly desire of any thing in the world, which I cannot expect to continue a great while in.”\*

Mrs. Yorke in several of her letters re-echoes the sentiments of Mrs. Jones as to the liberality and kindness of the Solicitor-General, and in one of them, written apparently soon after Mr. Yorke's death, she thanks her son for an addition to her income which he had thought proper to make.

This good old lady survived her husband six years, and lived to see her son still further advanced in his career.

The two following extracts from letters which were addressed to Sir P. Yorke by his old friend, Mr. R. Jocelyn, serve in part as a refutation of the insinuation which has been made by Mr. Cooksey's anonymous correspondent, and which has been repeated by Lord Campbell in his work already alluded to, that when Sir P. Yorke advanced in the world he forgot and deserted his old friends.

The first of the letters is dated “July 18, 1721,” and asks for Sir P. Yorke's interest to get the writer appointed “Counsel to the Commissioners of Revenue,” in Ireland. Jocelyn says in this letter, “every body knows you have the power, and every body must be sensible you have an inclination to serve your friends.”

The next letter will show that the good opinion entertained of the Solicitor-General by his friend was fully justified. It is dated “Corke, August 13, 1721,” and concludes thus—

“I cannot sufficiently express the sense I have of the

\* Hardwicke MSS., Wimpole.

kind recommendation you were pleased to make use of in my behalf. It was much more than I ought or could have expected from any one but a man of your generosity . . . 'Tis my happiness that I can make use of your abilities in returning my best acknowledgements to his Grace for his kind intentions to me. I am sure 'twill be done in the most proper manner. To this trouble give me leave to add the tender of the services of my life to you.'

A debate of some importance had occurred in the House of Commons on the 8th of December, 1720, being the day on which Parliament was opened, on an address of thanks in answer to the speech from the throne, and in which Sir Philip Yorke took a prominent part, but no distinct report of his speech is preserved; and on the 4th of January, 1721, we find him speaking in favour of Sir Joseph Jekyll's motion for introducing a bill for restraining the governor, directors, &c., of the South Sea Company from going out of the kingdom, which was ordered to be brought in. He also addressed the house on the debate on that bill, on the 10th of January, which we are told lasted five hours; but on neither of these occasions are the speeches or arguments of the different debaters separately recorded. Most of the leading members seem to have taken part in these discussions.

This year the plague raged in the southern parts of France, particularly at Marseilles. Even in Paris considerable alarm was created that it had reached that city. In 1721 a proclamation was published in England forbidding any person to come into this country from any part of France, between the Bay of Biscay and Dunkirk, without certificates of health. The streets in London

were ordered to be paved and kept clean ; a bill was introduced into Parliament for the prevention of infection by building pest houses, to which the infected persons, or the healthy of an infected family, were to be removed ; and by ordering trenches or lines to be drawn round any city, town, or place infected.

On the 17th of November the House of Commons resolved itself into a grand committee on this bill, Mr. Sandys in the chair. A clause being offered to be inserted in the bill, empowering the King to order his officers to fire upon and sink any ship coming from an infected place, Sir Gilbert Heathcote moved, and was seconded by Sir Nathaniel Gould and Mr. Chiswell, member for Calne, all Turkey merchants, “ That there might be an exception as to the ships of the Turkey Company ;” alleging that many of them were abroad, which they expected home very speedily, and which could not have notice of this law. They urged besides, that to allow the sinking and destroying all ships coming from infected places was, in effect, to prohibit all commerce with Turkey, where it was known by every body, that the plague was always in some part or other ; whereby we should lose the most beneficial branch of our trade, and which took off so much of our woollen manufacture. To this it was answered by Sir Philip Yorke and Mr. Yonge, that there was a vast difference between the common plague, which was epidemical in Turkey, and the contagion which then raged in the southern parts of France, to prevent the bringing over of which this bill was chiefly intended. That, therefore, it might be left to the discretion of the King and his ministers to act in that matter as they should see occasion, and to give directions accordingly by proclamation. And Mr. Thomas Brodrick added that for his part he was more afraid that in this

case, as on other occasions, the King would be too merciful rather than too severe. Hereupon the bill was gone through.\*

Yorke's success in the House of Commons as a debater appears on the whole to have been very considerable, notwithstanding the sneers of Horace Walpole, and the assertions of Smollett, who was incapable of appreciating merit in any of those who did not belong to the party which he espoused. This latter writer seems ever to regard all the Whigs as men of little talent and worth, while immaculate virtue, and qualities the most shining were supposed to be exclusively confined to the Tory ranks. So unmixed a character of any party or set of principles, whether favourable or unfavourable, must almost always be untrue, as there is hardly any system of tenets, that obtains an extensive degree of credit, which has not some strong claims to support; and even those which to the majority may appear to be the least deserving of confidence, are often upheld by the countenance of men whose character and talents must at any rate command respect for whatever they maintain. That Sir P. Yorke was not of the very moderate rank in which Lord Campbell† has placed him, as a parliamentary orator, may be plainly proved from the occasions of importance on which he spoke; the attention which his speeches commanded, as is evident,—both in the instances I have already cited, and still more in those which are to follow,—from the care with which they were replied to, and that by leading personages in the house; and from the intrinsic merit which many of his parliamentary orations, as we shall see when we have fuller reports of them, cannot be denied to possess. Nor is it likely that speedy

\* Debates of the Commons, Vol. I., pp. 269, 270.

† Lives of the Chancellors.

accession to office would have followed his election to the House of Commons as soon as he had delivered a few speeches there, where he was probably intended to make his trial as a debater after having been introduced by government into the House, unless his success there had answered the expectations that had been formed respecting him; more especially as there were at that time in the house several much older and leading members of the profession, to whom recourse might have been had. When Yorke entered the House of Commons, that assembly abounded with men of great talents and distinguished acquirements; and though many of these, like Addison, were not themselves in the habit of addressing the audience, yet it is the presence, not the performance of those whose criticism we dread that makes a public assembly formidable. A court of law or a lecture room is not the less difficult to encounter, because none but the advocate or the lecturer himself will address the meeting. No doubt, in Yorke's case, the handsome person, and good address, and popularity which he had achieved, would be highly favourable to him as an orator, both at the bar and in the House of Commons; but these of course were only collateral advantages, and merely served to set off more important endowments.

The failure of lawyers in Parliament, more particularly in the House of Commons, has now become almost proverbial. Nor do the causes of this appear so very difficult to unravel. The close, methodical, technical style of reasoning which the legal science engenders, so different to the ordinary mode of rhetoric or argument, contrasts entirely with the loose, irregular system of the House of Commons. And it must be admitted that lawyers often exhibit a want of comprehensive views, and

of enlarged principles, which the pursuit of law as a practical avocation, if not largely corrected by other studies, tends much to foster. Besides this, men of this class, whose minds have been engrossed by their profession, and who have not been accustomed to look much beyond it, come ill-prepared, either as regards general information, or knowledge of business transactions out of the strict province of their profession, to meet the representative assembly of a nation. The common error that people seem to fall into is that of supposing that because a barrister of all persons has the most practice in public speaking, he of all persons ought therefore to be best calculated to shine in an assembly, the entire business of which is carried on through the medium of oratory. Now all this would be very correct if the House of Commons were strictly and purely a rhetorical assembly: if skill in oratory, and real eloquence, and excellence of delivery, constituted the chief object of attention there, and the attainment of this formed the main end in being elected to that body. The former of these is, however, no more the case than the latter. Some of the leading debaters there, who are most attentively listened to, are remarkable rather for the want of all the ordinary leading qualifications of a great orator; while some really accomplished orators are heard with impatience. The fact is that it is the matter, not the manner or style of an orator that is there regarded. Beautiful ideas are despised in comparison of extended information ever so rudely conveyed; and comprehensive views obtain a decided preference over the choicest originality of conception. And even at the bar, mere rhetorical skill avails far less, and the want of it is much more easily dispensed with in the generality of cases, than by strangers might be supposed. Were the House of Commons the oratorical academy of

the nation, all this would doubtless be very deplorable. But as this motley assembly is called together only for the purposes of business, and its duty is to decide on certain practical questions submitted to it, its existing condition is not at all a subject of lamentation. Hence, however, in a great measure, it is that the refined subtleties, the adroit distinctions, the clever reasonings, and even the impassioned appeals of the practised advocate, so entirely fail in their effect on this august assembly.

When Sir P. Yorke's friend and correspondent, James Harris, took his seat in the House of Commons, Charles Townsend inquired of some member who he was; and being told in reply that he was a gentleman who had written on the subject of logic and grammar, he exclaimed, "Why does he come here, where he will hear nothing of either?"

But perhaps the members of the other learned professions would not fare much better than the lawyers, if they had the opportunity of being similarly tested. The clergy are not now admissible into the House of Commons. In the Lords, however, how seldom is it that a bishop becomes an eminent debater, though in this assembly it is much easier for a person to acquit himself tolerably than in the Commons; a fair hearing may always be gained; the audience is much smaller, and far more orderly; and the style more of the judicial than of the oratorical kind. Then it should be borne in mind that the most eminent only of the clergy are raised to the bench of bishops; whereas all the ordinary candidates for promotion at the bar are wont to obtain seats, and try their skill in the House of Commons. Unquestionably there are more great debaters, in proportion to their number, out of the law lords than are to be found among the bishops, which is, perhaps, the fairest way of

testing the relative proficiency in this respect of the two professions.

We must also take into account, and make large allowances for, the very limited time allowed to a judge, or a barrister in full practice, whose mind is intensely occupied the whole day with matters demanding his most painful attention ; having ordinarily, indeed, far more on his hands than he can well accomplish, and constantly having recourse to others for aid ; so that the senate, in reality, obtains only the residuary portion—the mere off-cast of his time ; while many others, as country gentlemen and official personages, have whole weeks before them to devote to this, which is the sole or main business of their life. Yet surprise is manifested, not only that the lawyer should be deficient, but that he should not be more successful than those who have this immense advantage over him. The clergy, too, ought in general to have a decided superiority over the members of the legal profession in classical acquirements and general knowledge ; though, on the other hand, the education of the bar may probably insure for its members more extended and deeper acquaintance with life and human nature than the former would obtain.

It has often been said to be a great disadvantage to a man to enter Parliament, as was the case with Yorke, with a high reputation, raising great expectations as to what he will do. The truth of this I am, however, much inclined to doubt. Prejudice in favour of a person goes a very great way in forming the opinions which are held respecting him ; and though we may be even disappointed with his actual performance, we are often apt to give him credit for excellencies we do not perceive, and to attribute qualities which we have in vain attempted to discover.

One circumstance may, perhaps, be allowed to constitute an important difference between the style of the debates in the House of Lords, and that of the debates in the Commons. In the latter there are always a great many practical men of business, and persons belonging to the mercantile and professional ranks, who speak only on the particular subject in which they are interested and are thoroughly acquainted with, and who are always well listened to on these topics, though on these only. In the House of Lords, there are hardly any strictly practical men of this class who are engaged in any professional or mercantile calling, and consequently all the different members of that assembly are much more on an equality. There are indeed generally some who are or have been in the church, the law, and the army and navy, though nothing like the same proportion of these (if we except the bishops, as belonging to the clerical profession) as there are in the Commons. Of the members of the numerous mercantile pursuits, whose interests occupy so extensive a share of the discussions in Parliament, and who form so large a band in the House of Commons, there are hardly any.

In the course of the year 1721, the Attorney-General, Mr. Lechmere, determined on relinquishing his profession altogether, and devoting himself entirely to political life. He accordingly resigned his post of first legal adviser to the Crown, and was appointed Secretary of State, and soon afterwards he was raised to the peerage by the title of Baron Lechmere. At first objections were raised against making him Secretary of State, and it was said that he was quite unused to business of this nature, and that such a measure would be altogether unprecedented. With regard to the latter

point, however, he mentioned the instance of Serjeant Trenchard.\*

It was, of course, naturally supposed that Sir P. Yorke would succeed to the Attorney-Generalship on the promotion of Lechmere. From some cause or other, however, Sir Robert Raymond was appointed to this office over the head of the Solicitor-General. Probably Sir P. Yorke was considered both too young and too inexperienced, at that time, to fill so important and so responsible a post as that of Attorney-General; and Lord Macclesfield might be unwilling to excite any additional feeling against himself by a further advancement of his *protégé*. Possibly, indeed, as Sir Robert Raymond was soon afterwards promoted to a puisne judgeship, he might have been appointed to the Attorney-Generalship over the head of Yorke, on the understanding that he would make way for the other, when he had added a little more to his experience, by accepting the first preferment that might become vacant.

In the public journals of this time, and of that which is immediately subsequent, are contained some extraordinary accounts of experiments which were made on criminals under sentence of death, who were granted a reprieve on consenting to submit to them. A case was laid before Sir Robert Raymond and Sir Philip Yorke, the Attorney and Solicitor-General, in June, 1721, for them to advise the Crown—

“Whether His Majesty may by law grant his gracious pardon to two malefactors under sentence of death, upon condition that they will suffer to be tryed upon them the experiment of inoculating the small-pox.”

\* From a note, by the second Earl of Hardwicke, to Burnett's History of his own Times.

To this Sir Robert Raymond and Sir P. Yorke stated their opinion that—

“The lives of these persons being in the power of His Majesty, he may grant a pardon to them upon such lawfull condition as he shall think fit ; and as to this particular condition, wee have no objection in point of law, the rather because the carrying on this practice to perfection may tend to the generall benefit of mankind.”\*

Very appalling accounts are given in the public journals of this period of the fearful ravages of the disease in question, which attacked all classes alike, and by which a great number of the children of the nobility, and even of the Royal Family, were carried off. Sir Philip Yorke lost one of his own children—his first daughter—by this disorder.

On the 1st of January, 1722, Sir P. Yorke's friend, Mr. Jocelyn, wrote to him from Dublin, and in his letter thanked him for the exertions on his behalf which the Solicitor-General had been making. He then proceeded—

“I beg leave to assure you y<sup>t</sup> I am truly sensible how much I am indebted to you, and y<sup>t</sup> I esteem y<sup>e</sup> obligation in y<sup>e</sup> same manner as if I had succeeded ; but, if ever I have the happiness of seeing you again, I'll trouble you with a short detail of one part of that affair, which I find you are a stranger to. If any new thing shall offer, I shall presume on an old acquaintance, and on the liberty you give me in your last, to begg your assistance. How beautiful is interest and power, when attended with an inclination to serve one's friends.”†

A letter of congratulation was at this time written to Sir P. Yorke by his relative, Mr. Meller, of Erthig, on the occasion of the birth of the Solicitor-General's second son, who was named Charles, and of whose career much will be narrated in the course of this memoir.

\* Hardwicke MSS. Wimpole.

† Ibid.

At the general election which took place in the spring of 1722, Sir Philip Yorke, notwithstanding the favourable expression which his constituents at Lewes had expressed on his behalf, was returned to parliament for Seaford, his election for which place he owed to the interest of the Pelham family. His colleague in the representation was Sir William Gage, Bart., who is mentioned in the Post Boy of the 27th of March, to have “lately renounc’d the errors of the Church of Rome, and conform’d himself to the Church of England.”

A notice of Yorke’s friend and future colleague in office, Mr. Talbot, occurs in the journals at this time.

“*March 17.*—This day Chas. Talbot, Esq., son to the Bishop of Durham, sets out for that city, whereof ’tis expected he will be chosen a representative, in the room of Geo. Baker, Esq.”

We have now arrived at a period which is rendered remarkable by the existence of a most extraordinary conspiracy which was at this time discovered, the object of which was to overturn the government of this country, and in which, as will appear by the sequel, several persons of distinction were concerned. The first mention of it in the newspapers is an announcement in one of the public journals of May 12, 1722, that the Lord Mayor had “received a letter from Lord Townshend, one of His Majesty’s principal secretaries of state, informing him that His Majesty has received information of a conspiracy, in concert with traitors abroad, to raise a rebellion in favour of the Pretender.” This piece of intelligence of course occasioned a prodigious sensation throughout the country, as did also the strong measures which were immediately adopted by the government for suppressing the dreaded insurrection, by at once encamping an army in the immediate neighbourhood of the metropolis, and seizing several persons of rank who were supposed to be

connected with this conspiracy. A few days prior to this announcement, a proclamation had appeared offering a reward of five hundred pounds "for the apprehending and securing of Mr. Weston, formerly clerk to Gray's Inn Chapel," who was charged upon oath with some treasonable proceeding or other, but whether connected with the above does not appear. In the same journal which contains the intelligence of the discovery of this conspiracy, it is stated, "on Wednesday last the three troopes of Horse Guards marcht to Hyde Park, and incampt on the ground markt out for them. The same day, the Lord Mayor and Court of Aldermen went to St. James's with an address, promising to preserve the peace of the city; to which His Majesty returned a most gracious answer, and conferr'd the honour of knighthood on Edw'd. Beecher, Esq., one of the present sheriffs and aldermen of Bishopsgate ward."

The example of the city of London was followed by a great many other cities and boroughs.

Then came the rumours of the apprehension of different persons, noble lords and others, on suspicion; and of some falling into the hands of the supposed rebels; one report mentions that "the Duke of Argyle was laid hold on by the enemies of the government in Scotland."

Some, on the other hand, appeared to discredit altogether the intelligence of either an intended invasion or conspiracy. One paper states "though some people talk foolishly of invasions from abroad, and we know not what besides, yet we cannot perceive the least danger."

The encampment, which on this occasion was formed in Hyde Park, seems to have been mainly regarded by the people of London as a scene of gaiety; and merry doings were anticipated, and very significant hints for improving the opportunity were thrown out.

“The expence and gallantry of the officers, at the last incampment in Hyde Parke, in entertaining the many beaux and belles that were continually sallying out of this great city to visit them, was very great, and will not be forgotten in haste by many of those generous gentlemen.”

In the Flying Post of June 14th, is contained a lively description of a review by the King, in Hyde Park.

“There was an appearance of about 60 dukes and other peers, besides abundance of other persons of distinction, particularly the Bishop of Durham (Dr. Talbot, father of the future solicitor-general and chancellor) who was finely mounted in a lay habit of purple, with jack-boots, and his hat cock'd, and black wig ty'd behind him, like a militant officer. But, above all, the eyes of the numerous spectators were on his Majesty, whom they admir'd for that graceful easy mien with which he sat on horseback, and returned the salutes of the officers, and for the wonderful agility with which he dismounted.”

His Majesty and the Prince dined one day in the tent, with several of the nobility. On the King's birth-day oxen were roasted whole in Hyde Park, and distributed among the soldiery.

On the 16th of June, it was mentioned that Mr. Johnson, *alias* Kelly, had been apprehended, but admitted to bail, himself in £4000, and two sureties in £2000 each.

“August 9.—Scarce a day passes without one or other being taken up on suspicion of practices against the government; so that there are now above thirty persons in custody on that account.”

Several persons are mentioned in the journals as sent after, on suspicion of treason: and the newspapers of this date contain several proclamations offering rewards for the apprehension of a great number of people who were missing. Some, too, of rank did not escape sus-

picion. In the Daily Post of the 25th of August is the following announcement :—

“Yesterday Dr. Francis Atterbury, Lord Bishop of Rochester, was examined before a committee of the council, at the Cockpit, Whitehall, and afterwards sent prisoner to the Tower.

“The day before being the 24th of August, two officers, the under secretary, and a messenger, went about two o'clock in the afternoon, to the Bishop's house at Westminster, where he then was, with orders to bring him and his papers before the council. He happened to be in his night gown when they came in, and being made acquainted with their business, he desired time to dress himself. His papers were all seized and sealed up, and the messengers are said to have treated him with unwarrantable rudeness and threats. He was then brought before the council, where he behaved with much calmness.”

One of the journals states :—

“August 28.—It was on Friday last, in the afternoon, that the Bishop of Rochester was committed to the Tower, upon an accusation of high treason. His lordship was at his deanery of Westminster, when two officers of the guards, and two messengers came to his house, and carried him and his papers to a committee of council. At the same time two other officers, and as many messengers, were dispatched to the episcopal palace at Bromley in Kent, who with the assistance of a constable searched the house, and brought away what papers they thought proper. But the bishop was not carry'd to the Tower in his own coach, as some papers have mentioned.”

Another journal mentions :—

“Last week several persons were taken up by the King's messengers, for selling of, or being otherwise concerned in, certain prints, wherein were such representations of the said lord bishop in his present confinement, as gave offence to the government.”

These prints represented the bishop looking through the bars of a prison, and holding in his hands a portrait of Archbishop Laud.

We next have an account of the apprehension, escape, and re-capture of the person who was in reality the prime mover and originator of the conspiracy.

*“London, Sept. 22.—*On Tuesday morning Christopher Layer, Esq., a barrister-at-law, aged about 30, who lived in Southampton Buildings, next Chancery Lane, was seized by Mr. Squire, one of the King’s messengers, in the Temple, upon a warrant of high treason; and the same morning being examined, was committed to the care of the said Mr. Squire, at his house in Manchester Court, in Channel Row, Westminster: from whence the next morning about ten o’clock, he found means to escape from a back window two stories high, in his waistcoat, without hat or peruke; and taking to the water side, none of the watermen would presume to carry him off, as judging he had escaped, and might be a person of consequence, till a sculler boy was prevailed on for the lucre of four guineas, to row him over. By the time they had got into the middle of the river, the messenger missed his prisoner, and instantly made a brisk pursuit upon the Thames. Mr. Layer landed at the King’s Arms Stairs, and put on the waterboy’s cap, the better to disguise himself; but that rather made him the more taken notice of, and the pursuers soon after at the said stairs, got intelligence of the route he had taken, and followed him to St. George’s Fields, where, although he was a great distance from them, yet finding no possibility of getting clear of them, he sate himself down, and waited till the pursuers came up, and quietly surrendered. That night he was several times under examination at the Cockpit, Whitehall, and on Thursday morning about three o’clock, he was sent prisoner to the Tower for high treason, in being, as we hear, sent to and from Rome with messages to the enemies of the government. Some time since this gentleman’s sister received £1000 damage of a rich upholsterer in Cornhill, for non-performance of a marriage contract.

“Yesterday morning, Christopher Layer, Esq., was conveyed from the Tower in a hackney coach guarded by soldiers, and several warders, to Whitehall, where he was several hours under examination before a committee of lords of the council, and about four in the afternoon he was remanded back to the Tower.

“Several printers have been taken into custody this week, for printing papers offensive to the government.”

A few days after this, Lord North and Grey was apprehended on suspicion of treason.

*“London, Sept. 27.—*On Tuesday evening, the Lord North and Grey was seized in the Isle of Wight, upon suspicion of being on his way to France without a license.”

*“Sept. 29.—*Yesterday the Lord North and Grey arrived in town

from Guildford, where he had lain on Wednesday night, attended by General Macarteny, Colonel Gordon, and a messenger. His lordship was met some miles out of town by his lady. He was carry'd to the Cockpit, where he gave up his sword, being required so to do, and delivered it to General Macarteny, who conducted his lordship to his own house till he should be examined.

“Mr. Swafthfuger, his lordship’s secretary, was taken on Wednesday night at his lordship’s house in town.”

On the meeting of Parliament, a bill was immediately introduced and speedily passed, empowering His Majesty to secure all suspected persons.

Minor offences against the government were still pretty frequent, and were summarily punished.

“Sarah Turbett, for cursing the King, to stand on the pillory in Cheapside, and to suffer six months imprisonment.”

It is also mentioned that great alarm had been caused in the dead of the night, by one of the hutted tents in Hyde Park taking fire.

One journal. of October 23rd, states—

“On Monday morning about nine, three coaches with four horses each, went from Westminster; and in them the evidences against Counsellor Laver, and messengers, guarded by a party of horse, to Runford,” [in Essex, the county in which the treason was committed, and where a true bill was found by the grand jury.] “Counsellor Laver” [the account goes on] “is we hear continued in irons in the Tower.”

“Oct. 27.—Tuesday last being the first day of term, His Majesty’s Attorney-General moved the Court of King’s Bench for *certiorari* to remove the indictment for high treason found against C. Laver, Esq., at Runford, into the said Court of King’s Bench, in order to his being try’d thereupon at the bar of the said court, which motion was granted by the Court.”

The same journal say—

“The Bishop of Rochester is very ill in the Tower, not of the gout, but of an intermitting fever; whereupon a warrant is granted to Mr.

John Markham, his lordship's apothecary, to visit him in the absence of Dr. Friend.

"Last Wednesday the Lord North and Grey's lady came to the Tower to speak with her husband, but not being admitted he opened the window and told her in a jocose manner, 'Madam, this place is a convent for men only, and not for your sex!'"

A suspected criminal of a still higher rank next appears upon the stage. The following is from the Weekly Post of Oct. 27 :—

"On Wednesday last, in the evening, the Duke of Norfolk was brought up from the Bath to his own house in St. James's Square in custody; next day his Grace was examined before a committee of Lords of His Majesty's Most Honourable Privy Council at Whitehall, and that evening was remanded to his own house under a guard.

"Yesterday, upon receiving a message from His Majesty, it was agreed in the House of Lords that the Duke of Norfolk should be sent prisoner to the Tower.

"Publick credit begins to flourish again, and the stocks have within these few days risen very considerably.

"Captain Kelly, *alias* Johnson, who formerly burnt his papers when the messengers came to seize him, is taken up and confined to the custody of a messenger.

"Yesterday morning about ten o'clock, Counsellor Layer was carry'd from the Tower in a coach guarded by ten warders, and twelve soldiers, with a sergent and corporal, to the King's Bench Bar, and there arraigned."

The fullest particulars of the conspiracy are to be found in the account of Layer's trial, the following notice of which has been abridged from the authorised report of it, published with the sanction of the Lord Chief Justice, and the Attorney and Solicitor-General, as appears by the correspondence on this subject among Sir P. Yorke's papers.

On the 31st of October, Mr. Layer, who was a barrister practising on the Norfolk Circuit, was brought to

the bar of the Court of King's Bench at Westminster, upon a habeas corpus directed to the Lieutenant of the Tower of London, in order to be arraigned on an indictment for high treason, in compassing and imagining the death of the King, found by the grand jury for the county of Essex, before Special Commissioners of Oyer and Terminer.

The judges who presided on this occasion were Lord Chief Justice Pratt, and Justices Powis, Eyre, and Fortescue Aland. The counsel who appeared for the prosecution were the Attorney-General (Sir Robert Raymond), the Solicitor-General (Sir Philip Yorke), Mr. Serjeant Pengelly, Mr. Serjeant Chesshyre, and Mr. Wearg. The counsel for the prisoner were Mr. Hungerford and Mr. Ketelby.

The return of the habeas corpus and the indictment having been read, the prisoner was called on to plead to it, who complained to the Court that he was brought there in fetters and chains, and had been dragged through the streets, and made a spectacle of by the gaolers. It appeared that there had been an attempt to escape. And the Chief Justice thereupon declared that that being the case, the prisoner ought to be secured in such a manner as to prevent his escaping a second time.

The trial itself took place on the 21st of November. On the prisoner being brought to the bar his counsel at once applied to the Court to have his irons taken off.

*“ Lord Chief Justice.—The irons must be taken off; we will not stir till the irons are taken off.”*

Mr. Wearg opened the case, and explained the substance of the indictment, which contained several counts against the prisoner.

Serjeant Pengelly then stated the case to the jury,

from whose speech and the evidence adduced, it appeared that a plan for a general insurrection, the overthrow of the established government, and bringing in the Pretender had been formed; the persons of the King and Prince were to be secured, and the ministers arrested. The Tower was to be seized upon, and the army bought over.

Several witnesses were examined, who swore to the facts as detailed in Mr. Serjeant Pengelly's speech. An account was also given of finding the treasonable scheme and correspondence relating to this conspiracy at Mr. Layer's lodgings in Southampton Buildings, and proof was afforded of their being in his handwriting.

The prisoner was, however, ably defended by counsel, and addressed the Court himself with considerable effect.

Sir P. Yorke, as Solicitor-General, replied to the arguments and the testimony given on behalf of Mr. Layer, in a speech which is considered a masterpiece of legal argument and close reasoning. It occupied two hours in the delivery, and an outline only of it is contained in the report. He commented on the testimony of the witnesses who were called to disparage the character of those for the Crown; and observed with great force that while so doing, they had nevertheless corroborated the testimony of the latter as to the particular facts mentioned by them. Their evidence, he also remarked, was confirmed by independent facts, by the papers found in the prisoner's possession, and by his own confession, proved on the testimony of persons whose credit was beyond dispute.

Sir Philip Yorke thus concluded his address on this occasion :—

“I have now done with repeating, and observing upon the evidence on both sides, and I beg leave to insist upon it that we have fully made

good what was opened to you in the beginning of this cause ; that in general there has been a horrid conspiracy carried on, in order to overthrow our happy constitution, and to deprive us of all the blessings we enjoy, and promise ourselves under this establishment in His Majesty, and his Protestant Royal Family. The part the prisoner hath acted in this fully appears to you, and it appears to be a very considerable one.

“ It has been said, indeed, that he is but an inconsiderable man, of no rank or fortune, fit to sustain such an undertaking. That observation may be true, but since it’s plain he did undertake it, that joined with the other circumstances proved in this cause serves only to demonstrate that he was set on work, and supported by persons of greater abilities for such an enterprise. And, gentlemen, this is the most affecting consideration of all. But I would not even in this cause of your king and of your country, say anything to excite your passions ; I choose rather to appeal to your judgments, and to those I submit the strength and consequence of the evidence you have heard.

“ My Lord, I beg pardon for having taken up so much of your time. I have but one thing to add, and that is, humbly to beg of your lordship for the sake of the King—for the sake of myself—and for the sake of the prisoner at the bar, that if I through mistake or inadvertency, have omitted or misrepresented anything, or laid a greater weight upon any part of the evidence than it will properly bear, your lordship will be pleased to take notice of it and set it right, that this whole case may come before the jury in its true and just light.”

At the conclusion of Sir P. Yorke’s speech Mr. Serjeant Cheslyre observed—

“ It is so late that it will be inexcusable in me to trouble your lordship with anything by way of reply, especially since Mr. Solicitor-General hath done it so fully. We shall only beg leave to call a few witnesses to the credit of the King’s witnesses.

Mr. Ketelbey.—“ I shall not take up much of your lordship’s time, especially since your lordship and the Court have been entertained so well, and so long by Mr. Solicitor-General, at least two hours, as I have observed by my watch ; but ’twas impossible for me to think him tedious, though so late at night, and especially since his conclusion is exactly agreeable to the conclusion of a late celebrated Solicitor-General on a like occasion.”

The Lord Chief Justice charged the jury, summing up

the evidence at considerable length. The jury withdrew for about half an hour to consider their verdict, after which they returned into court and found the prisoner "Guilty;" and sentence of death was afterwards passed upon him.

A great many accounts of Mr. Layer's conduct and demeanour, subsequent to his conviction, are contained in the journals of this time.

"*Nov. 27.*—We hear Mr. Layer since his conviction lives mostly upon water gruel, and is preparing himself for death. His wife was admitted to see him on Sunday, and his sister yesterday."

The same journal mentions the following Wednesday as the day fixed upon for his execution.

The account which follows is given of his demeanour and conduct at his trial:—

"He is said to have behaved himself very well, and to have appeared very brisk and lively during the trial; but upon the jury's bringing in their verdict, he was struck with a sudden damp, and seemed extremely chagrined, and was heard to say that he believed none but those very men (who composed his jury,) would have done the like."

In the published report of the trial his behaviour does not appear to have been throughout quite correct, as while Sir Philip Yorke was addressing the jury, the prisoner was observed to be making observations to them in an underhand tone, on which the Solicitor-General appealed to the Court to stop this.

"*Lord Chief Justice.*—Sir, you must not do it.

"*Prisoner.*—My Lord, I did not speak to the jury.

"*Mr. Hungerford* offers to speak.

"*Lord Chief Justice.*—I tell you, Mr. Hungerford, it is not right, Mr. Layer hath made his observations to the jury, and made his nods, and sometimes I have seen his lips move.

"*Prisoner.*—You can't tell what I said.

"*Mr. Solicitor-General.*—I saw you turn about to the jury, and saw your lips move at the same time.

"My Lord, I desire he may stand up, and look towards the court, which is his proper posture."

Another account mentions that "he was cloathed in black when he went to receive his sentence, and has continued so ever since, and is settling his private affairs and preparing for death."

His execution was, however, postponed from time to time, and a very moving description is given in the public journals of his taking leave of his wife and family on one occasion, preparatory to his expected execution, when he received a reprieve for a short period.

The reason of these reprieves was the hope of eliciting something from Mr. Layer, against the other State prisoners in the Tower; and for this purpose he was several times examined by committees of both Houses of Parliament, at which Sir Philip Yorke attended for this purpose, as Solicitor-General. The result of these examinations was printed and laid before Parliament, but nothing very material was obtained.

In the *Freeholders' Journal* of the 9th of January 1723, it is stated—

"The window at which the Bishop of Rochester has been all along allowed to discourse his friends at the Tower is lately nailed up by order of Colonel Williamson, the deputy governor; and his lordship is more closely confined than ever. His servants are not now permitted to be seen by anybody."

After some further reprieves had been granted Mr. Layer, so that the public opinion, and the hopes of his friends, now led to the belief that the sentence of the law would not be carried out against him, the journals of the day mention as follows.—

"*May 4th.*—Yesterday, Mr. Christopher Layer was carried under a

strong guard from the Tower, to the bar of the King's Bench, Westminster; and a new rule of court was made for his execution on Friday, the 17th instant."

Another journal states the following:—

"*May 14th.*—Mr. Christopher Layer, who stands condemned for high treason, being ordered for execution on Friday next; we are well assured that he hath received notice to prepare for death in good earnest, and not to flatter himself with the hopes of any further reprieve."

Accordingly, one of the journals of the 18th of May contains an account of his execution.

"*May 18th.*—Yesterday, Christopher Layer, Esq., was executed at Tyburn, pursuant to his sentence at the Court of King's Bench, for high treason. The sheriffs having demanded him of the proper officer of the Tower, he was delivered up accordingly, and his fetters being knocked off, was carried under a guard of warders and soldiers through the little guard-room over the Draw Bridge, to the wharf, from whence he walked to the Iron Gate near St. Katherine's, in the county of Middlesex, where he was received by the Sheriff's officers, and carried upon a sledge to the place of execution, whither he was attended by two clergymen, viz., Mr. Hawkins, and Mr. Berryman, who assisted him in his devotions. He made a speech at the gallows, and delivered a paper to the undersheriff; and another to a friend of his. His head was afterwards sent to Newgate to be set up as we hear at Temple Bar, but his quarters were delivered to his friends, who put them into a hearse, and brought them round about by Kensington, to Mr. Purdy's, an undertaker, in Stanhope Street, Clare Market, who had them sewed up in order to be interred in Cambridgeshire."

There is a story\* that Layer's head, having fallen from the top of Temple Bar, was picked up by an attorney of the name of Pearce, who was agent for the nonjurors; that Dr. Richard Rawlinson, the antiquary, for a large price obtained it from Pearce, preserved it as a curious relic, and by his will caused it to be buried in his right hand.

On the 8th of March the Commons proceeded to

\* State Trials; Nichols's Literary Anecdotes.

take into consideration the report from the committee appointed to examine Christopher Layer, and others ; and after some discussion resolved, without a division :— That upon consideration of the report and the several papers and examinations relating to the conspiracy, it appeared to the House that a detestable and horrid conspiracy had been formed and carried on by persons of figure and distinction, and their agents and instruments, in conjunction with traitors abroad, for invading these kingdoms with foreign forces, for raising insurrections and a rebellion at home, for seizing the Tower and City of London, for laying violent hands upon the persons of his most sacred Majesty, and the Prince of Wales ; in order to subvert our present happy establishment in Church and State, by placing a Popish pretender upon the throne.

On the 11th of March the House resumed the adjourned consideration of the report from the secret committee, and Sir Philip Yorke opened the debate in a speech which is said to have displayed considerable talent,\* although no report of it has been preserved ; wherein he particularly enlarged on the share Mr. George Kelly and John Plunkett had in that traitorous and detestable conspiracy, and then moved a resolution expressing the opinion of the House to that effect, which was carried without a division. Sir Philip Yorke then moved that a bill be brought in to inflict certain pains and penalties upon George Kelly and John Plunkett, which was seconded by Mr. Robert Walpole, and supported by Sir Joseph Jekyll and Mr. Taibot ; and, the question being put, it was carried by 280 against 111.

Mr. Younge then moved the House against Dr. Francis Atterbury, Bishop of Rochester, proposing a

\* *Law Magazine*, No. 7.

resolution that he was principally concerned in the conspiracy. The motion was carried, and it was agreed that a bill should be brought in to inflict certain pains and penalties on the Bishop of Rochester.

The bills against Plunkett and Kelly, and the Bishop of Rochester, passed soon through the Commons. The two former were by these acts to be kept in close custody during his Majesty's pleasure in any prison in Great Britain, and to be punished with death in case of their attempting to escape. The latter was to be deprived of his office and benefice, and banished the kingdom for ever. The Bishop declined making any defence against the bill before the House of Commons, though firmly protesting his innocence, which he asserted in a letter to the Speaker. The majority of the Tory members, finding that no effectual resistance to the measure could be offered, quitted the house.

The Daily Post of the 27th of April says,

“Yesterday, John Plunkett was carry'd under a strong guard from the Tower to the bar of the House of Lords, to make his defence against the bill now depending to inflict on him certain pains and penalties ; and at night he was remanded back. We hear he had summoned about 28 witnesses, but that several of them declared they knew him not.”

A newspaper of the 6th of May contains some intelligence of the proceedings respecting the Bishop of Rochester.

“This day the Lord Bishop of Rochester will be carry'd up to the bar of the House of Lords to make his defence by himself and his council, against the bill now depending for inflicting on him certain pains and penalties ; where, for the more easy standing of his lordship and council, a convenient place is fitted up and cover'd with scarlet cloth.”

The bill for inflicting pains and penalties on the

Bishop of Rochester having passed the Commons without a division, the Bishop was brought to the bar of the House of Lords on the 6th of May. In one of the journals of the next day are the following particulars :—

“ Yesterday, about eleven o'clock, the Bishop of Rochester was carried from the Tower, under a guard, in an open chariot to Westminster Hall, and from thence in a chair, through the Court of Requests and Painted Chamber, to the House of Lords, and at night he was remanded to the Tower, from whence he was carried down again this day. He was yesterday disturbed in his passage to the House by the clamours and insults of the mob : but, upon application to the peers for safety and protection, strict orders were given to seize and secure all who should be guilty of such inhumanity, and a guard was appointed to defend his person.”

The evidence against him having been gone through, some in his favour was produced. Among his witnesses was Erasmus Lewis, who was called to prove, from his official experience, how easily handwriting might be counterfeited. Pope also appeared to depose to the Bishop's domestic habits and literary employments ; but, as often happens in the case of persons of great genius or learning, what a plain man could do very well he accomplished very ill, and made but an indifferent figure as a witness. Pope had but few words to speak, and in those few we are told that he made several blunders.

During the proceedings against Atterbury, an accusation was made against Sir Robert Walpole of tampering with the Bishop's witnesses, and of being concerned in a plot against certain great men. These charges made it necessary for Walpole himself to appear as a witness, and disavow them. On this occasion the Bishop used all his art to perplex the minister and make him contradict himself, but did not succeed. “ A greater trial

of skill," observes Speaker Onslow, "than this scarce ever happened between two such combatants; the one fighting for his reputation, the other for his acquittal." On a division 43 peers voted against the bill, and 87 for it.

The following is from one of the journals:—

"*June 19.*—Yesterday, between 12 and 1, the deprived bishop of Rochester set out from the Tower in the navy barge, attended by Mr. Morris and his wife, having a license for that purpose under his Majesty's sign manual; and Col. Williamson, who had two warders with him, delivered him up to Captain Lawrence, commander of the Alborough, man-of-war, lying in Long Reach. Two footmen in purple liveries attended him, himself being in a lay habit of grey cloth. Great numbers of people went to see him take water, many of whom accompanied him down the river in barges and boats. We hear that two messengers went on board the man-of-war to see him set on shore at Ostend, from whence 'tis said he will proceed to Aix-la-Chapelle after staying some time at Brussels."

The Daily Post of the 26th of June contains this further account of the Bishop.

"They write from Dover, June 24, that the Lady Lansdowne, with a considerable retinue, landed there on the 22nd, from Calais, where the late Bishop of Rochester was set ashore, on the morning of the day before, according to his own desire, being afraid to land at Ostend, the sea running high on the coast of Flanders."

As he went on shore at Calais, he was told that Lord Bolingbroke, having received the king's pardon, was just arrived at the same place on his return to England. "Then I am exchang'd," said Atterbury, with a smile. "Surely," exclaims Pope, who was the friend of both of them, "this nation is afraid of being overrun with too much politeness, and cannot regain one great genius but at the expense of another."

The newspapers of the 24th June announced that

“The Rev. Mr. Moore, who was chaplain to the late Bishop of Rochester, is made chaplain to his Grace the Duke of Wharton.”

Thus terminated, as disastrously in all respects as it deserved to do, this extraordinary, and wild, and unprincipled conspiracy, which seems to have originated rather with discontented and ambitious spirits in this country, who hoped to have been largely advantaged by its success, than in any efforts of the Pretender or his adherents, or any machinations of foreign powers ; so that not merely the only reasonable apology for their disloyalty in thus rebelling against their Sovereign, from some belief of a better title in another, or the promotion of the public good, was here utterly wanting, but the project was still further disgraced by having sprung from the meanest and most sordid motives only.

Of Atterbury's guilt no reasonable doubt can be entertained, and all sympathy for his sufferings must be dissipated by the consideration of the dishonest and disingenuous part that he acted both towards the government and his friends ; to the former of whom he had taken a solemn oath of allegiance, several times repeated, and on the faith of which he held high preferment, and exercised offices of great dignity and responsibility ; and to the latter of whom, to the latest period, he persisted in a disavowal of his guilt, and in endeavouring, though unsuccessfully, it appears, to deceive them into a belief of his innocence, and that he was unjustly treated by the government. Very different, both in point of honesty and disinterestedness, had been the conduct of some, holding at one time the same high situation with himself, and of whose deprivation he must have been a witness, who chose rather to relinquish the station of affluence and dignity they might otherwise

have retained, merely because they could not conscientiously subscribe to those oaths which Atterbury scrupled not to violate.

The evidence against the Bishop must be deemed satisfactory on the whole, though many appear to have disbelieved it at the time, and even to have doubted the existence of the conspiracy. Of these latter, perhaps, some would have professed, had circumstances induced them to do so, to have had misgivings as to the existence of Walpole himself. Whether Parliament had any right to proceed as they did, and to exercise the function of deprivation of a Bishop, may be a point of considerable doubt and difficulty. Earl Cowper, the ex-Chancellor, who was perhaps, on the whole, the highest and best authority of that day on such a subject, declared it to be his opinion in very decided terms that they had not.

Of Layer's guilt, and the justice of his sentence, hardly any difference of opinion can now exist. But perhaps an opinion almost as decisive will be formed of the barbarous conduct of the government in inflicting on their victim the mental torture they did—the only kind of torture they were not restrained from exercising—by repeated short reprieves; and who, after holding out every hope by this means of an ultimate commutation of his sentence, when they had made all the use of him they could, abandoned him to the executioner, and thus left his relatives to reflect, that the measure of ignominy which his interrogators had failed to persuade him to heap upon himself by involving his allies, they had supplied by the mode of his death. It is satisfactory to reflect that Sir P. Yorke's conduct on the trial, and the fact of his not being at this time a member of the cabinet, exculpate him from the suspicion of having been a participator in this transaction.

The Solicitor-General was at this time occupied in a legal inquiry relative to another bishop, though of a very different character to Atterbury, and the investigation into whose conduct terminated in a more satisfactory manner. During the course of the year 1722, Dr. Thomas Wilson, who for many years filled the see of Sodor and Man with exemplary piety and learning, was, in consequence of a disagreement with the governor of the island respecting the conduct of the lady of the latter, whom the bishop had deemed it right to forbid from partaking of the holy sacrament, imprisoned at Castle Rushen, and also fined. The bishop appealed to the English government against the measures adopted by the governor, and a report of his case, drawn up by Sir Robert Raymond and Sir Philip Yorke, was laid before the council. In the end, the treatment which the bishop had received was declared unjust, and he was accordingly released, and his fine remitted. Sir Philip Yorke's estimation of the virtues of this excellent prelate is shown by the favour which he afterwards evinced towards his son.

The address of the Earl of Derby, the then sovereign of the Isle of Man, to the Attorney and Solicitor-General, on this occasion, is among Sir P. Yorke's papers. His lordship contended that the island had been "always esteemed a free nation," but did not attempt to demonstrate that this condition of freedom consisted in the right to inflict at pleasure unjust persecution on a bishop. The conduct of the latter he asserted in general terms to be contrary to law and justice, and most arbitrary and cruel; though, singularly enough, he failed to specify any one of the atrocities imputed to this asserted monster. The only fact of importance mentioned by him was the circumstance that during the rebellion of 1715 the

bishop refused to accede to the governor's request that the prayers on behalf of the government, appointed to be read in all churches and chapels in England, should be read also in the Isle of Man.\*

The high value at which, at this period, the professional services of Sir P. Yorke were estimated, and the importance of securing them, may be seen by the following letter addressed to him by the Duke of Newcastle, his Majesty's secretary of state.

*“ Newcastle House, June 14, 1723.†*

“ DEAR S<sup>r</sup>,—All my friends are so desirous of having your assistance whenever they can, y<sup>t</sup> I must begg y<sup>e</sup> favour of you, if possible to lett Col<sup>l</sup>. Tyrrell have your advice and assistance in a cause y<sup>t</sup> is now depending between him and Sir Clotery Hill. Mr. Tyrrell is informed y<sup>t</sup> some application has been made to you from S<sup>r</sup> Clotery Hill, but if that be such as you can in any way putt by, I should be extremely oblig'd to you if you would do it, for it will be a great concern both to Mr. Tyrrell and myself y<sup>t</sup> we should want y<sup>e</sup> assistance of one y<sup>t</sup> is in every respect so able in y<sup>e</sup> profession.

“ I hope you will excuse this trouble in, D<sup>r</sup> Sir,

“ Y<sup>r</sup> most obed<sup>t</sup> humble serv<sup>t</sup>,

“ HOLLES NEWCASTLE.”

The following letter affords an interesting proof, in addition to those already given, of the falseness of the charge brought against Sir P. Yorke of discarding the friends of his early youth when he had attained wealth and distinction. It is addressed by him to a solicitor at Colchester, with whom Martin Morland, the son of his old tutor, was placed as a clerk, and who, it appears, had

\* Hardwicke MSS., Wimpole.

† Ibid.

grossly misconducted himself. The kindly feeling and sympathy which it displays in the poor widow's misfortunes need not be pointed out.

“ Sept. 3, 1723.\*

S<sup>r</sup>,—Mrs. Morland has been with me to be advis'd concerning her unhappy case in regard to her son Martin. I had a very great respect for his father, who was formerly my schoolmaster, and a very learned and valuable man, and therefore was extremely sorry to hear that his son sho<sup>d</sup> behave himself in so improper a manner in your service as to make you entertain thoughts of never seeing him again. But though the faults of young men may be great, and such as I won't take upon myself to excuse, any otherwise than by saying y<sup>t</sup> he is really very young, and therefore there is y<sup>e</sup> greater room to hope for amendm<sup>t</sup>, yet your candour and good nature (of which I have heard a very good account) will easily make you sensible of y<sup>e</sup> unfortunate condition of y<sup>e</sup> widow, who has before her eyes not only y<sup>e</sup> prospect of losing some part of the money given with him, but likewise of his losing his time and education in y<sup>t</sup> way of business on w<sup>ch</sup> his advancement, and indeed subsistence in y<sup>e</sup> world must depend.

“ As I have heard a good character of you, I told her I believed those considerations would have weight with you, and for y<sup>t</sup> reason, before I gave her any advice whatsoever, undertook to write to you on this subject, and to make it my request to you that you would trye once more to doe this young man some good. Mrs. Morland tells me you did once make some proposall, \*wher<sup>e</sup>in one of the purports is that she sho<sup>d</sup> give a bond. This is a matter which she is desirous to be excused

\* Hardwicke MSS., Wimpole.

from, and I can't blame her, because in affairs concerning the behaviour of a young man which may be capable of different turns and constructions, it may tend hereafter to entangle her, and with regard to yourself it seems not very necessary, since (as I suppose) you have y<sup>e</sup> covenant of his father in his articles. If this particular were got over, I believe you would find little difficulty in others.

“ As to y<sup>e</sup> son, all I undertook was to recommend this matter to you as one of y<sup>e</sup> profession, and to assure you that whatever you shall come into for this young man's welfare, I shall, out of the respect I have to y<sup>e</sup> memory of his father, look upon as a favour done to myself. I begg you'll excuse this trouble from one so much a stranger to you. And,

“ I am, &c.,

“ P. YORKE.

“ To Mr. Edmund Baynham,  
“ Colchester.”

The only effect of this letter appears to have been to call forth a reply from the obdurate attorney, full of praise of Sir P. Yorke, and of abuse of Mrs. Morland's wayward son, whose conduct, he says, “ hath broke me more hours' rest than anything I ever met with.”

A letter, in very characteristic style, from the Master of the Rolls to Sir Philip Yorke, was at this time written. The intimacy between them increased as they had more experience of each other; and the Solicitor-General and Lady Yorke were often in the habit of enjoying the hospitalities of Sir Joseph and Lady Jekyll at their country retreat at Belbair.

“ DEAR COSEN,\*—You are very obliging to inquire after my health, as you did by yo<sup>r</sup> kind letter. I thank God the waters agree with me, and I have no symptoms of the return of my feavour. That which I desire is that you would take care of your health, and enjoy the country air, as much as you can. Can’t you find some company to carry you to Belbar. I am very glad to hear my Lady Yorke and her little boy got well to Worcester. I hope you will have a good journey thither, and that this fine weather will continue. Here is a good many people, and but little company, Mr. Nash says; but Tom Brodrick and Mr. Trenchard are here. I’m afraid some dangerous machinations will be imputed to us, but I flatter myself they will be thought so odd nobody will have any concern about ’em. The Daily Post told us of yo<sup>r</sup> removal, and that you were gone to be next way or next dore to the Attorney-Generall; wherever you are, nobody wishes your prosperity more than I. My wife and my lady Williams are very well, and desire their service may be given you. I am mighty glad to find my Lady Williams so much better than I have known her a good while.

“ I am, Sir,

“ Y<sup>r</sup> most affectionate humble serv<sup>t</sup>,

“ J. JEKYLL.”

Another letter was addressed by the same eminent judge to the Solicitor-General, on a matter of professional importance, the authority of the Lord Chancellor to make new orders in Chancery without the concurrence of the Master of the Rolls. Sir P. Yorke’s friend, Lord Maclesfield, at this time held the great seal, and Sir J.

\* Hardwicke MSS., Wimpole. Date indorsed in the handwriting of Sir P. Yorke, “ Bath, Sept. 4, 1722. ”

Jekyll availed himself of the intimacy between the Chancellor and the Solicitor-General to make an effort for adjusting the matter in dispute fairly and amicably.

It appears not improbable that the circumstance of Yorke's attention being thus turned to this subject, and his researches directed for information here, may have led to the composition of the work bearing on these matters, which a few years afterwards emanated from him.

From a paragraph in the following letter from Sir Joseph Jekyll to Sir P. Yorke, which was written some time before the proceedings against Atterbury had been commenced, it would seem that some doubts were entertained by the members of the legal profession as to what manner the imprisoned prelate should be dealt with, and what tribunal should be constituted to try him.

The anxiety of Sir P. Yorke's relative about the health of the Solicitor-General amidst the arduous and exciting duties in which he was about to be engaged, will be here remarked; and the advice to him to take country air and exercise, in order to enable him to encounter these great undertakings, is as salutary and as deserving of attention by the professional aspirants of the present day, as it was deemed by the distinguished individual to whom it was addressed, and who duly observed and profited by its injunctions.

“ *Dallington.* \*

“ I hope you will take as much country air as you can before business confines you so much as it will doe: the little boy I take for granted is at Belbar, which will be a means of drawing you and my Lady Yorke both thither.

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\* Hardwicke MSS., Wimpole.

“ We are very anxious in this country about the tryal of the Bishop, and who are to pass upon him ; it has been proposed to try him by a jury of prebendarys ; and for the court in which he is to be tryed, the Northton Mercury says, it is to be at the King's Bench bar, by a special com'ission of oyer and terminer.

“ But in good earnest I hope this opportunity will be taken of disarming the Highlands, and putting Scotland on a better foot by taking in the superiorityys, which was proposed in a very sensible paper deliver'd me last winter by Catalogus Frazer.

“ We propose to be at Belbar next week, when we hope to meet you and my lady, but our day is not fix'd by reason of multiplicity of business. My wife and I are humble servants to my Lady Yorke.”\*

During the autumn of this year, Sir P. Yorke, and his colleague in the representation of Scaford, Sir William Gage, presented their constituents with a clock, and a set of bells ; in return for which the Solicitor-General had the satisfaction of being informed that the worthy and independent electors of that town several times drank his health in a bumper.

A curious incident occurred during the summer of the year 1723. which was the cause of some unpleasantness to Sir P. Yorke ; but the gentlemanly feeling of the latter induced him at once to terminate the matter satisfactorily by a letter to the offended party, expressing his regret at the circumstance, and informing him that he had discharged the aggressor from his service. It appears that one morning, near Westminster Hall, one of Sir P. Yorke's servants, without any apparent provocation, grossly abused and threatened the Earl of Coningsby.

\* Hardwicke MSS., Wimpole.

The matter was investigated before the magistrates, and it came out that a dog belonging to the father of the delinquent had been shot by the Earl's gamekeeper.

Sir P. Yorke concluded his letter to the Earl of Coningsby by stating—

“If there is any thing further your Lordship could reasonably expect from any gentleman on such an occasion, I am ready to do it.”\*

The letter which follows was addressed by Sir Philip Yorke to Mr. Pulteney, the celebrated opposition leader and antagonist of Sir Robert Walpole. It is dated the 31st of October, 1723, and was written at Dover, where the Solicitor-General was spending a portion of the vacation with his mother and friends. It relates to a cause in which Sir P. Yorke had been concerned, and where a judgment had been pronounced adverse to the party for whom he appeared; and who afterwards desired to print a statement of his case, by way of appealing to the public against the decision of the Court.†

“SIR,—I have at y<sup>r</sup> request read over y<sup>e</sup> inclosed case of Mons<sup>r</sup> Saladin, and tho’ I am not fully of opinion with y<sup>e</sup> judgment w<sup>ch</sup> has been given upon it, for y<sup>e</sup> reasons which I hinted to you in general when I had the honour to see you here, I cannot think that paper is fit to be printed. The publishing of pamphlets tending to expose the decisions of Courts of Justice, is taken as an appeal from those y<sup>e</sup> law makes y<sup>e</sup> proper judges, to y<sup>e</sup> people, and has been often censured and punished, especially if it has been accompanied with any misrepresentation of facts.

“Now, as far as my memory serves me, on this oc-

\* Hardwicke MSS., Winapole.

† Ibid.

casion, I think that some circumstances are mentioned in this paper in favour of Mons<sup>r</sup> Saladin, which, (tho' they may be very true) yet did not appear in evidence in his cause, and one or two are omitted which made against him. I remember the House of Lords did not long agoe commit a person for pretending to print y<sup>e</sup> evidence in his cause after they had determined ags<sup>t</sup> him, and printing only y<sup>e</sup> depositions on his own side. On y<sup>e</sup> contrary, whoever hears of it must believe, that (whether y<sup>e</sup> judgment was right or wrong,) his case was hard. As to y<sup>e</sup> having his cause reheard, I am afraid, y<sup>t</sup> cannot be, but his solicitor sho<sup>d</sup> enquire whether it has been ever granted in these causes of appeal before y<sup>e</sup> judges ; and if it can be done, it may not be improper for him to make such an application. I am, &c.

“ P. YORKE.”

During the month of October in this year, not only the legal profession, but the nation at large, sustained a great loss in the death of Earl Cowper, who had twice filled the office of Lord High Chancellor, with great ability, and unblemished integrity. He is stated to have been profoundly skilled in the laws of his country, and to have been in his apprehension quick and penetrating, in his judgment clear and determinate ; and to have possessed a manly eloquence. His manner, we are told, was agreeable, and his deportment graceful.\*

Sir Philip Yorke had now been nearly nine years at the bar, and during more than three years had filled the office of Solicitor-General. So far his career was to an extraordinary degree both rapid and successful. He had been promoted by the partiality of a great law officer of the Crown to a high and responsible situation ;

\* Smollett.

his ability to discharge the duties of which, however, could alone render this advancement of any advantage to him. His powers had now been well tested, and that in several modes ; as a lawyer, as an advocate at the bar, and as a debater in the House of Commons. In all these different capacities, and in Westminster Hall, both as a junior and a leader, he had been found fully adequate, and had gained great applause.

The eventful proceedings already narrated, afforded the fairest opportunity to him of evincing his talents in a variety of ways. In the trial that he himself was thus subjected to, he came off triumphant, and by the splendour of his abilities not only amply justified the apparently undue preference that had been shown towards him on his first promotion, but was now entitled to claim advancement to an office of higher rank, and more important position.

## CHAPTER III.

1724—1733.

SIR PHILIP YORKE APPOINTED ATTORNEY-GENERAL—WOOD'S PATENT—CONDEMNATION, ESCAPES AND EXECUTION OF JOHN SHEPPARD—JONATHAN WILD, HIS TRIAL AND EXECUTION—LAWLESS STATE OF THE COUNTRY—LORD MACCLESFIELD'S IMPEACHMENT—LORD BOLINGBROKE AND SIR P. YORKE—PROFESSIONAL OCCUPATIONS—PURCHASE OF HARDWICKE—ORATOR HENLEY—DUKE OF WHARTON—WORK ON THE JUDICIAL AUTHORITY OF THE MASTER OF THE ROLLS—DEATH OF GEORGE THE FIRST—TRIAL OF HALES AND KINNERSLEY; OF HUGGINS AND RAMBRIDGE—DEBATE ON HESSIAN FORCES, AND ON BILL PROHIBITING LOANS TO FOREIGN PRINCES—PROSECUTION OF THE CRAFTSMAN—DEBATE ON STANDING ARMY—ON WALPOLE'S EXCISE SCHEME—DEATH OF LORD CHIEF JUSTICE RAYMOND—SIR PHILIP YORKE'S ARGUMENTS IN BANCO—HIS CHARACTER AS ATTORNEY-GENERAL—STYLE OF HIS ORATORY.

ON the 31st of January, 1724,\* the following legal promotions and appointments took place. Sir Robert Raymond, Knight, His Majesty's Attorney-General, was made one of the justices of the Court of King's Bench, in the room of Sir Robert Eyre, who succeeded Sir Thomas Bury as Lord Chief Baron. Sir Philip Yorke was advanced from the office of Solicitor-General to that of Attorney-General; and Mr. Clement Wearg, on whom the honour of knighthood was at once conferred, was appointed His Majesty's Solicitor-General. Thus did Yorke rise to the very head of the profession to which he belonged, in less than nine years after the period when he became a member of it.

It is not improbable, as I have already remarked, that

\* Hardwicke MSS., Wimpole.

on the retirement of Mr. Lechmere from the Attorney-Generalship, Sir Philip Yorke was considered too young and too inexperienced, both as regarded his age and his standing in the profession, to succeed the former. Neither the public nor the government could have had full confidence in him, however able he might be ; besides which, his powers had not been then sufficiently tested to afford proof of what he was capable. The trials of Laver, Kelly, and Bishop Atterbury, were of great service to him in this respect.

From the position which he now occupied—the highest that an advocate can hold—all his energies would be called forth. Causes of the greatest magnitude would be intrusted to his care, and on him would rest the conduct of trials of the utmost importance, not only to the ministry, but in which the safety of the Crown itself was more or less involved. As a reasoner, as a lawyer, and as an orator, his powers would now be exercised to the full.

Sir Philip Yorke received the following letter from his friend Mr. Jocelyn, congratulating him on his promotion to the Attorney-Generalship :—

“ Give me leave, d<sup>r</sup> S<sup>r</sup>, to congratulate you on the new • accession of His Majesty’s favour to you. The utmost your friends can wish, or you desire, is, that you may fill the employment you now enjoy with as much honour as you did that you have left, & our wishes wou<sup>d</sup> amount to certainty, cou<sup>d</sup> we be sure that an increase of business wou<sup>d</sup> not interrupt y<sup>e</sup> continuance of your good health, which every day grows more necessary to the publick, & not less useful to your friends. Since you are so good as to give me a place amongst these, you’l forgive me that I have trespassed on your time

in sending my best wishes for y<sup>e</sup> continuance of your health & success.

“ I am,

“ D<sup>r</sup> Sir,

“ Your very affectionate & devoted servant,

“ ROBERT JOCELYN.”\*

“ *Feb.* 26, 1723.”

Some minor promotions in the professions also took place at this time. On the 24th of April there was a call of no less than twelve serjeants. One of the journals of the time gives an account of the ceremony of coining them, and of the convivialities with which the occasion was celebrated, to which Sir Philip Yorke was invited.

Another journal says that—

“ The Lord Chief Justice Pratt made a most eloquent speech, setting forth His Majesty’s goodness on the choice of such worthy persons to that dignity; and recommended them to a dutiful behaviour and an honest discharge of the functions to which they were called.”

After the entertainment, it is satisfactory, and for the credit of the profession, to learn that “ the company broke up in excellent order between 6 and 7 in the evening.”

The ministry of which Sir Philip Yorke was a member was involved in considerable perplexity soon after his accession to the Attorney-Generalship by the following circumstances.

In July, 1722, two patents passed the great seal for William Wood, Esq., to make copper money for the kingdom of Ireland, and halfpence and twopences of fine mixed metal for the use of His Majesty’s dominions in America, for the term of fourteen years. Ireland at that

\* Hardwicke MSS., Wimpole.

time was very deficient in copper coinage. A great clamour was, however, raised against this coin. The Parliament of that kingdom, which met in September, 1722, resolved that it would be prejudicial to the revenue, destructive of trade, and of dangerous consequence to the rights of the subject; that the patent had been obtained by misrepresentation; that the halfpence wanted weight; that even if the terms of the patent had been complied with, there would have been a great loss to the nation; that the granting a power of coinage to a private person had ever been highly prejudicial to the kingdom, and would at all times be of dangerous consequence. Addresses from both houses were presented to the King on this subject, and the affair was referred to the Lords of the Privy Council in England. The latter justified the conduct of the patentee, upon the report of Sir Isaac Newton and other officers of the Mint, who had made the assay and trial of Wood's halfpence, and found that he had complied with the terms of the patent. They declared that this currency exceeded in goodness, fineness, and value of metal, all the copper money which had been coined for Ireland in the reigns of King Charles II., King James II., and King William and Queen Mary. The Privy Council likewise demonstrated that His Majesty's predecessors had always exercised the undoubted prerogative of granting patents for copper coinage in Ireland to private persons; that none of these patents had been so beneficial to the kingdom as this granted to William Wood, who had not obtained it in an unprecedented manner. And, after a reference to Sir Philip Yorke and Sir Clement Wearg, as the Attorney and Solicitor-General; and after Sir Isaac Newton had been consulted in every particular, they proved in the end, by a great number

of witnesses, that there was a real want of such money in Ireland.\*

Notwithstanding this, however, the ferment in Ireland was kept up with great dexterity and industry. Pamphlets, papers, and lampoons were industriously circulated, in the composition of which the celebrated Dean Swift was very active. In one of these he asserted that their very beggars would be ruined by this measure. Lord Carteret, the Lord Lieutenant of Ireland, was unsuccessful in all his endeavours to obtain the introduction of this copper money into Ireland. The patent was therefore voluntarily surrendered by Wood, and thus tranquillity was restored. Wood received pensions to the amount of £3,000 per annum for eight years, to indemnify him for the loss he had sustained.

An amusing anecdote is recorded in the journals of the day respecting the prime mover of these disturbances and Lord Carteret, which is too good to be omitted.

“They write from Dublin that when Dean Swift went to attend the Lord Lieutenant, after tarrying some time in the levee room, he wrote the following distich on an old card :—

‘ My very good Lord, ’tis a very hard task,  
That I should thus wait who have nothing to ask.’

Which being handed to his Lordship, it was returned, with this answer :—

‘ My very good Dean, there are few who come here,  
But have something to ask or something to fear.’ ”

From the official connection between Sir Isaac Newton and the Attorney-General, and from their having been on several occasions brought into close contact, I hoped to have discovered some original letters of that great philosopher and excellent man among Sir P. Yorke's papers. In this, however, I have been disap-

pointed; and the only manuscript here relating to the great astronomer is a curious paper containing directions about the trial of the Pix, indorsed, "found among Sir Isaac Newton's papers." Sir Isaac Newton was moreover on intimate terms with Dr. Zachary Pearce and Dr. Samuel Clarke, both of whom were friends of Sir P. Yorke; and also with Mr. William Jones, who, as already stated, had been the instructor of the Attorney-General during his youth, in mathematical science.

Sir Philip Yorke, in his capacity of Attorney-General, was at this period called upon to deal with a culprit whose rank, and the nature of whose offences, varied very greatly from those of the state criminals mentioned in the last chapter, but whose exploits in a certain way have gained for their perpetrator scarcely less note than the enormities directed against the very existence of the State obtained for the latter. I have thought it best to present the account of these different matters to the reader exactly in the manner that they are recorded in the journals of the day, from which I have collated them, without depriving the narrative of any of its freshness or natural vivacity, by an attempt to relate the circumstances anew.

The first notice of the hero in question is contained in the following paragraph in one of the public journals:—

*“August 1st.*—One Sheppard, a notorious housebreaker, who lately made his escape from New Prison, was lately retaken, and committed to Newgate, and attempted also to escape from the gaol, several saws and instruments proper for such a design being found about his bed. He is since confined in an apartment called the Stone Room, is kept close, and sufficiently loaded with irons.”

We afterwards have an account of Sir Philip Yorke

and his colleague going down to Windsor, for the purpose of calling His Majesty's attention to matters of the highest importance connected with Sheppard.

*"August 29th.*—On Saturday there was a general council held at Windsor, Sir Philip Yorke and Sir Clement Wearg, His Majesty's Attorney and Solicitor-General, and the Right Honourable Robert Southwell, Esq., Secretary of State for Ireland, attending according to order. There was a cabinet council soon after, when His Majesty was pleased to order that of the six malefactors condemned at the last sessions, Joseph Ward, for three robberies on the highway; Francis Upton and John Shepherd, for burglary and felony, be executed on Friday, the 4th of September next ensuing; and another warrant to be made out for that purpose."

The next mention of Sheppard is contained in a journal of September 5th, published a few days before that appointed for his execution.

*"Sept. 5th.*—Last Monday a most surprising accident happened at Newgate, which is as followeth, viz.: John Shepherd, one of the condemned malefactors, finding himself ordered for execution, and being provided with saws, files, and other implements, found an opportunity to cutt off one of the great iron spikes over the door of the condemned hold (at which the prisoners usually converse with their friends), and being of a very slender body, got himself through into the lodge, and from thence into the street, and so escaped, assisted by his wife and another woman, several persons being in the lodge at the same time, at a table, engaged in a deep discourse concerning his dexterity in his formerly escaping from New Prison. He went off in his irons, which were hid by a nightgown, and he is supposed to have immediately taken coach. The other condemned prisoners intended to follow his example, but were prevented by a timely discovery.

"There is the following letter in print supposed to come from him to Jack Ketch:—

"Sir,—I thank you for the favour you intended me this day. I am a gentleman, and allow you to be the same, and I hope can forgive injuries: fond nature pointed, I followed—Oh, propitious minute! and to show that I am in charity, I am now drinking your health, a *bon repô* to poor Joseph and Anthony. I am gone a few days for the air, but design speedily to embark, and this night I am going up a mansion

for a supply. It's a stout fortification, but what difficulties can't I encounter, when, dear Jack, you find that bars and chains are but trifling obstacles in the way of your friend and servant,

“JOHN SHEPPARD.

“From my residence in *terra Australis incognita*,  
September 4th, 1724.

“P.S. Pray my service to Mr. Or—di—ry and Mr. App—bee.

“The wife of the aforesaid John Sheppard was on Tuesday last apprehended, and being charged with aiding and assisting him in making his escape out of Newgate, was the next day carried before Sir Francis Forbes, who committed her to the Poultry Compter. Yesterday Anthony Upton, condemned the last sessions for housebreaking, and Joseph Ward, for robbing upon the highway, were executed at Tyburn.”

The Post Boy of September the 8th states :—

“Sept. 8th.—Yesterday several persons went post out of town, in quest of John Sheppard, the condemned malefactor.”

Another journal, of Sept. 12th, gives the following account of his recapture, and some particulars respecting the mode of his escape :—

“Sept. 12th.—On Thursday, about noon, John Sheppard, the malefactor who made his escape from the condemned hold of Newgate on Monday, 31st of August, was apprehended and taken by the officers and turnkeys of that prison at the town of Finchley, near Highgate, in company with one William Page, an apprentice to a butcher in Clare Market. The last patiently surrendered, and Sheppard took to the hedges, where being closely pursued and discovered, and pistols presented to his head, he begg'd them for God's sake not to shoot him on the spot, trembled as in great agony, and submitted. There were found upon him two silver watches, a large knife, and a chisel ; and a knife only upon his companion. They were both disguised in butchers' blue frocks, and woollen aprons. Being brought to town Sheppard was immediately carried to Newgate, loaded with heavy irons, and put into the condemned hold and chained. William Page was carried before Sir F. Forbes, examined, and committed to Newgate, with orders to be double ironed, and to be kept from Sheppard, and he was accordingly put into the castle, and his friends are not permitted to see him.

“In the evening a divine and several gentlemen went into the condemned hold to Sheppard, who seemed composed and cheerful,

and acknowledged the manner of his escape, *viz.* :—That having got out of the condemned hold he took coach at the corner of the Old Bailey, (along with a person whom he refused to name) went to Black Fryer's Stairs, and from thence by water to the Horse Ferry at Westminster, and came in the middle of the night to Clare Market, where he met his companion, and there disguis'd themselves in the manner above mentioned. From thence they rambled to a relation of Page's, within seven miles of Northampton, where they were entertained a few days; and growing uneasy at their not being able to make satisfaction for their board, returned towards London. He has hinted in dark terms that he hath committed robberies since his escape, and denies that he was ever married to the woman who assisted him therein and who is now in the Compter for the same, declaring that he found her a common strumpet in Drury Lane, and that she hath been the cause of all his misfortunes and misery. He takes great pains to excuse his companion Page of being any ways privy to his crimes, whom he says only generously accompanied him after his escape. 'Tis thought that his execution will be on Monday next."

The British Journal says :—

"They found upon Sheppard two watches, one under each armpit."

The newspapers mention that there was a difficulty about his execution, until he had been properly and legally identified. The Attorney-General and the other authorities were, however, speedily extricated from their embarrassments with respect to this, by Sheppard himself.

"October 10.—On Wednesday last John Sheppard found means to release himself from the staples fixed in the floor of the apartment called the castle in Newgate, by taking off a great padlock from his legs. He attempted to pass up the chimney, but by reason of strong iron bars in his way was prevented. In the midst of his endeavours, the keepers came up to bring him victuals, when to their very great surprise they found him at liberty in the room. They searched him very carefully, and found not so much as a pin, and when they had chained him down again the head keeper and others came and intreated him to discover how he had thus got himself free from the

staples. He reached out his hand and took up a nail, and with that unlock'd himself again before their faces. He is now handcuffed, and more effectually chained. This day ninety-seven felons are to be carried from Newgate to be shipped for the plantations : among whom is the brother of the above-named Sheppard."

"*Oct. 17.*—On Thursday night, John Sheppard escaped again from Newgate, altho' he was double ironed, handcuffed, and chained down in the room called the castle ; yet he found means in a very surprising manner to free himself from the staple to which he was chained. Afterwards he broke down the wall of the chimney, and got into several rooms, broke through six doors on which were five strong locks and a bolt, and thereby getting upon the leads of the gaol, he from thence climbed down to the top of the turner's house adjoining to it, and found a way to get into that also ; and having come down and opened the street door, made off in his iron boots, and is not yet heard of, which hath struck the keepers with such amazement, that they think he was assisted in this last enterprize by the devil himself."

The following advertisement offering a reward for Sheppard's apprehension, contains some particulars respecting his personal appearance, which may be deemed interesting.

" John Sheppard did break out of Newgate in the night between the 15th and 16th of this inst. October, with double irons on his legs, and handcuffs on his hands, with a bright horse lock under his other irons. He is about twenty-two years old, about five feet four inches high, very slender, of a pale complexion, has an impediment or hesitation in his speech, and did wear a butcher's blue frock with a great coat over it, and is a carpenter or house joiner by trade. Whoever will discover or apprehend him so that he may be brought to justice, shall have twenty guineas reward, to be paid by the keeper of Newgate.

"N.B. If any persons conceal him from justice (knowingly) since he has made his escape, it is felony, and they will be prosecuted for the same."

Some intelligence about his movements is given in a journal of the 31st of October.

"*Oct. 31.*—The keepers of Newgate have received certain infor-

mation that the famous John Sheppard came a few nights ago to the brewhouse of Messrs. Nichols and Tate, in Thames-street, and begged some work of the stoker, which was given him, and that before the proper officers could be got to secure him, he went off."

Another periodical of the 7th of November, contains the particulars of his apprehension.

"*Nov. 7.*—John Sheppard, the famous thief, house-breaker and jail-breaker, who being under sentence of death had made his escape out of Newgate two several times in a very surprising and wonderful manner, was retaken on Saturday night last about twelve, and brought back thither before one next morning, where sufficient care is taken to secure him for the remainder of his time: he being confined in a very strong apartment, double ironed on both legs, handcuffed, and chained down to the ground with a chain running through his irons, which is fastened on each side of him, and we hear a watch will be kept upon him beside. He was apprehended in the following manner. A boy belonging to Mr. Bradford, a headboro' in Drury Lane, saw him at a butcher's shop near Newtoner's Lane, cheapening some ribs of beef, and meeting with an acquaintance of his of the hundreds of Drury, commonly called Frisky Moll, he went to treat her with a dram at a chandler's shop adjoining; in the meantime the boy, who knew him perfectly well, told his master what he had seen, who getting some persons to his assistance, apprehended him. When he was searched, they found a pair of pistols about him ready charged. He was equipped every way like a gentleman, having on a wig, worth about six or seven guineas, a diamond ring on his finger, a watch and snuff box in his pocket, and some gold; being also dressed in a suit of black, having furnished himself therewith on Friday morning last, by breaking open a pawnbroker's shop in Drury Lane, and taking from thence most of the said goods, and divers others to the value as we hear of about £60. When he was brought back to the jail he was very drunk, carry'd himself insolently, and defy'd the keepers to hold him with all their irons, art, and skill.—Wednesday, several noblemen came to Newgate to see John Sheppard. He is watched night and day by two persons. He has owned several robberies committed by him since his last escape from Newgate on the 15th October, and in particular the robbing of a gentlemen in Leicester Fields of a gold watch a night or two after his said escape."

The sensation which was created in the metropolis

at the time by his adventures, is evident by the following paragraph :—

“ Nov. 7.—Nothing contributes so much to the entertainment of the town at present, as the adventures of the famous housebreaker, and gaol breaker, John Sheppard. ’Tis thought the keepers of Newgate have got above £200 already by the crowds of people who daily flock to Newgate to see Sheppard.”

This paper also mentions that after he was taken, he was carried in a coach to Newgate, crying out, “ Murder! rogues! bloodhounds!” and calling for help.

The following letter is among the Hardwicke MSS. at Wimpole, and is from the Duke of Newcastle, then Secretary of State, to Sir P. Yorke :—

“ *Whitehall, November 6th, 1724.*

“ SIR :—His Majesty being informed of the very extraordinary escapes that John Sheppard a felon convict has twice made out of Newgate, and how very dangerous a person he is, has commanded me to signify to you his pleasure that you do *forthwith* cause him in the proper course of law to be brought before the Court of King’s Bench, to the end that execution may, *without delay*, be awarded against him; and, that he may be the more securely kept, His Majesty would have you move the Court that he may be remanded to Newgate, to remain in custody there until his execution.

“ I am Sir,

“ Your most humble serv<sup>t</sup>,

“ HOLLES NEWCASTLE.”

“ Mr. Attorney-General.”

The note which follows is in the Attorney-General’s handwriting, and is addressed to Mr. Paxton, the Solicitor to the Treasury :—

“ MR. PAXTON :—These papers came late last night.

Goe forthwith to Mr. Harcourt and consult with him what is proper to be done, and bring me instructions at Westminster, that, if possible, I may move the Court this morning for a certiorari and habeas corpus.

“Y<sup>rs</sup>, P. YORKE.”

“Saturday Morn.”

We next have an account of Sheppard being brought before the judges of the Court of King's Bench, when a final order was made for his execution. On this occasion Sir Philip Yorke appeared as the law officer of the Crown.

“*Nov.* 14.—Mr. Pitt, the keeper of Newgate, having made application to the Lords of His Majesty's Most Honourable Privy Council in relation to John Sheppard the notorious housebreaker, &c.; on Saturday last Mr. Attorney-General made a motion at the King's Bench bar, Westminster, that the said John Sheppard might be brought before that court to have execution of the sentence of death awarded against him; to the end he may no longer elude the laws; whereupon their Lordships ordered a writ of habeas corpus, and a writ of certiorari for bringing the prisoner and the record of his conviction to Westminster on Tuesday last, and accordingly between eleven and twelve he was carried down to the King's Bench bar at Westminster, where Mr. Attorney-General moving that his execution might be speedy, and a rule of Court made for yesterday, he addressed himself to the bench, earnestly beseeching the judges to intercede with His Majesty, and desired a copy of the petition he had sent to the King might be read, which was complied with; but being asked how he came to repeat his crimes after his escapes, he pleaded youth and ignorance, and withall his necessities, saying that he was afraid of every child and dog that looked at him, as being closely pursued, and had no opportunity to obtain his bread in an honest way, and had fully determined to have left the kingdom the Monday after he was re-taken in Drury-lane. He was told the only thing to entitle him to His Majesty's clemency would be his making an ingenious discovery of those who abetted and assisted him in his last escape; he averred that he had not the least assistance from any person but God Almighty, and that he had already named all his accomplices in robberies, who were either in custody or beyond sea, whither he would be glad to be sent himself. He was reprimanded for profaning the name of God. Mr. Justice Powis, after taking notice

of the number and heinousness of his crimes, and giving him admonitions suitable to his sad circumstances, awarded sentence of death against him, and a rule of Court was ordered for his execution on Monday next, being the 16th inst. He told the Court that if they would let his handcuffs be put on, he by his art would take them off before their faces. He was remanded back to Newgate through the most numerous crowds of people that ever were seen in London, and Westminster Hall has not been so crowded in the memory of man. A constable who attended had his leg broke, and many other persons were hurt and wounded in Westminster Hall Gate. Wednesday, Sheppard was brought out of the middle stone room, and put into the condemned hold along with Houssar the French barber, and there chained to the floor, and ordered to be watched by two men day and night. His lodgings near Newport Market having been searched, there was found an iron crow, the handcuffs he had on when he escaped the second time from Newgate, as also several instruments fit for breaking houses, &c."

The following description of his execution is from one of the journals of the day :—

"*Nov. 21.*—From his last re-apprehension to his death, some persons were appointed to be with him constantly day and night. Vast numbers of people came to see him, to the great profit both of himself and those about him ; several persons of quality came, all of whom he begg'd to intercede with His Majesty for mercy, but his repeated returning to his vomit left no room for it, so that being brought down to the King's Bench bar, Westminster, by an habeas corpus, and it appearing by evidence that he was the same person, who, being under a former sentence of death had twice made his escape, a rule of Court was made for his execution, and which was on Monday last. At the place of execution he behaved very gravely, spoke very little, gave a paper to a friend, and after some small time allowed for devotion, he was turned off, dying with much difficulty, and with uncommon pity from all the spectators. The same night his body was buried in St. Martins-in-the Fields, with a velvet pall, and the funeral service performed, &c. A detachment of the Princes Guard attended the corpse with the bayonets fixed on their muskets to prevent the violence of the populace who had been very tumultuous all day, so no further disorder happened."

The account in another journal states :—

"It was thought necessary as he was an enterprising fellow to put him on a pair of hand-cuffs ; in order to carry him with more security

to the gallows, which could not be done but by main force, he struggling against it with all his might. And being searched before he was put into the cart, they found concealed about him a clasp knife, with which he designed to cut his halter and then to leap among the mob as his last refuge. The crowd of spectators was indeed prodigiously great. A bailiff in Long Acre having procured the body of John Sheppard to be brought to his house after execution with a sinister design, and thereby frustrating the preparations of his real friends for burying him in a decent manner, the same occasioned a great riot in Long Acre. The mob expressed great satisfaction when they saw him buried, though they had bruised his body in a most shameful manner at Tyburn, in pulling it to and fro in endeavouring to rescue it from the surgeons. An undertaker who waited near the gallows with a hearse to have carried the body immediately to St. Sepulchre's, where a grave was already made for it, was insulted by the rabble, who broke the hearse, and beat the man and his servant, the bailiff having artfully given it out that the undertaker was employed by the surgeons, which in truth was the bailiff's case."

Thus ended the career of a person who, from the extraordinary dexterity with which he pursued his nefarious schemes, has obtained a certain kind of celebrity even in our day, and indeed been attempted to be raised to the rank of a hero. Some good and generous qualities doubtless appear to have animated him, and occasionally to have displayed themselves under the most trying circumstances. His fidelity to his allies, the generosity with which he always behaved towards his friends, and his undaunted courage and self-possession, only lead us the more to regret that these excellent endowments which nature had given him should have been rendered nugatory and even pernicious by an education and long practice in vice, and instead of serving to adorn, only exhibited strange inconsistencies in his general character. While we also admire his great ingenuity and wonderful resources, we can only deeply deplore that these should have been entirely perverted for the worst of purposes, and as a whole he can only excite applause by separating altogether

the consideration of his extraordinary powers from that of the entire misuse of them. As it was, he who was capable of attaining high and honourable distinction by the proper application of these endowments, died, as he undoubtedly deserved to do, and as every requirement of law and justice demanded that he should, the death of a felon. Hence, although by his "bad eminence," he has made himself almost as great a moral pest after his death as he was a social one during his life, he was at last compelled to make some atonement for his misdeeds by serving to evince that the brightest talents, if misapplied, will only procure for their possessor a proportionate degree of ignominy and misfortune.

It has been said that Sheppard was in some way or other related to Mr. Cornwall, who was at that time Speaker of the House of Commons, and that application was made to that gentleman to use his influence on behalf of Sheppard, which he, however, declined doing, on the ground that the latter was so great a bane to society, and ought to be made an example of.

The following letter is among the papers relating to the career of Sir Philip Yorke as Attorney-General, now in the possession of his descendant at Wimpole, and affords a curious illustration of the legal history of this period.

"SIR PHILIP YORKE,—I mak bold to let you know there is one Thomas Ingram, that was fore man of the jury, last sessions at the Old Bayley, for the County of Midd<sup>x</sup>, & Mr. Scame, & Mr. Martin, and<sup>t</sup> some more of them that took bribes, in on triall, and villified your honor by saying you was like a tronkmake<sup>r</sup> which made more noise than any thing else, and these men will be upon the jury at y<sup>e</sup> Exchequer this terme, & at the

Common Pleas, where you ought Sir Philip to take notice of them, for they will only serve to corrupt others.

“ Who am your unknown servant & well wisher,

“ DAVID COLLIER.

“ *November the 13th, 1724.*”

Sir Philip Yorke was also about this time engaged in the prosecution of another felon, who, though he had but few of what were, or rather what might have been, the redeeming qualities of Sheppard, intellectual or moral, and though, from his education and the age to which he attained, there was far less extenuation for his conduct than may be found in the case of the other, yet he has hardly obtained a lower degree of celebrity, and his life and adventures engaged the pen of a no less accomplished and distinguished author than the novelist Fielding, and formed, indeed, one of the very happiest of all his productions. The calling or profession, if so it may be dignified, in which Jonathan Wild delighted to engage, and in which the times found him abundant employment, was one for which, according to a certain old adage, he must have been singularly well adapted—that of general thief-taker for London and its neighbourhood. He appears to have been largely employed in the recovery of stolen property, and in the newspapers of this date there are a great many advertisements relating to this, containing references to him, such as the following, from the *Daily Courant* :—

“ Lost, out of a gentleman's chambers in the Temple, on Sunday night last, a pocket book and a purse, in which, amongst other odd things of very little value, was an old small picture on a copper plate. Whoever brings or sends the book and purse with the other things to Mr. Jonathan Wild, in the Old Bailey, shall have two guineas reward for the whole, or one guinea for the picture only, and no questions asked.”

The success with which he pursued his calling is also

frequently recorded in the columns of the public journals of the time. One famous exploit, if it may be so ranked, from the notoriety and eminence of the culprits captured, deserves to be noticed.

“Blueskin and Parkins, two notorious highwaymen and house-breakers, were taken a night or two ago by Jonathan Wild, and are committed.”

As Mr. Wild advanced in his occupation he appears to have acquired additional dexterity. Perhaps his energies expanded as the occasions for their exercise increased. In one journal of the 23rd of May, 1724, we are told—

“On Sunday morning Jonathan Wylde apprehended a gang of about 100 persons, in Southwark, on suspicion of robbing on the highway. They were examined before Justice Machan, Marshall of the King’s Bench, and most of them were committed to the county gaol.”

In another newspaper of the 17th of October, we have a further account of Mr. Wild, in which there is a passing notice of one of Sheppard’s exploits.

“Wednesday, Jonathan Wilde, the famous thief-taker, attending the sessions at the Old Bayley, in order to give evidence against Joseph Blake, *alias* Blewskin, indicted for breaking and entering the house of Mr. William Kneebone, a woollen draper in the Strand, along with John Sheppard and William Field; Mr. Wilde went into the place under the Sessions House, where the said Blewskin with other prisoners was kept to wait his tryal, and had some friendly discourse together, when Blewskin on a sudden took Wilde round the neck, and with a small clasp-knife cut his throat even to the windpipe in a very dangerous manner, and afterwards rejoiced, saying that he should be hanged with pleasure if Wilde did but die before him. Mr. Dobbins and another surgeon were sent for, who sewed up the wound, and they have hopes that Mr. Wilde will recover.”

Mr. Wild, it appears, did recover, but his troubles had as yet but reached their commencement. In a journal of the 20th of February, 1725, it is stated—

“The well-known Jonathan Wille, who has been the means of

sending so many persons to Newgate, is at length quartered there himself. The particulars of the accusation are as yet uncertain, but we hear great bail has been refused."

The Weekly Journal, of the 17th of April, gives an account of the postponement of the trial. Sir Philip Yorke it seems was to have conducted the prosecution against him.

"Jonathan Wilde was set to the bar in order to his tryal for felony, Mr. Attorney and Mr. Solicitor-General being present on the part of his Majesty; but upon a motion of Mr. Kettleby, and an affidavit of the prisoner that two material witnesses for him were out of town, and after several learned arguments on both sides, the tryal was put off till the next sessions, and he was remanded back to Newgate, and strict orders given to the persons to take care of him."

Mrs. Jonathan Wild appears to have been unhappy in her attachments; nor does her own conscience seem to have been quite serene. The same paragraph goes on to state—

"The wife of Jonathan Wilde, the thief-taker, whose former husband was executed at Tyburn, after an escape from the condemned hold of Newgate, is fled, warrants being issued for the apprehending her."

The 16th of May was appointed for the trial, which was, however, postponed on account of Sir Philip Yorke's other professional engagements.

Mist's Weekly Journal, of May 17th, mentions that—

"Yesterday, Jonathan Wild was brought down to be tryed, but Mr. Attorney-General having other business so that he could not attend, the tryal was put off till this day."

A journal of the 22nd of May gives a brief account of his trial.

"On Saturday last came on the tryal of the much-talk'd-of but little pitty'd Jonathan Wilde. The indictment he was cast upon was for returning stolen goods to the right owner without prosecuting the persons who committed the theft, which is made felony by a late statute. The

evidence against him was very full, being one Kelley, a man, and Murphey, a woman, two agents employ'd by himself, besides the person robb'd; when the whole jury found him guilty."

There were a great many other charges against him which, as he was sentenced to death on this one, were not proceeded with.

The same newspaper, of the 29th of May, gives an account of his conduct after his condemnation, and of his execution.

"Last Monday about the usual time, the notorious Jonathan Wilde was executed at Tyburn. He was born at Wolverhampton, in Staffordshire, in 1684, so that he was 41 years old. Never was there seen such a prodigious concourse of people before upon any occasion, and what's very remarkable in all that numerous crowd there was not one pitying eye to be found, or compassionate word to be heard; but on the contrary all the way he went nothing but hollowings and huzzas as if it had been a triumph, particularly when he was turn'd off. The night before his execution he took a large dose of liquid laudanum, in order to have dispatched himself, but swallowing too much, and having fasted four days, it seem'd to have a stupifying effect upon him. He never went to the chapel during the whole time that he continued under sentence of death, saying that he was lame, and unable to support himself on his legs, and much more unable to go up so far."

Another reason which he gave for not attending the service was, that he should be so distracted by the observation and whispers of those about him, that he should be thus led to add profanity to his other crimes. He petitioned for a reprieve, and said he could make great discoveries; but on his examination as he could offer nothing material, this was refused.

An account is given in one of the newspapers of this time of the barbarous custom of burning prisoners in the hand, and of the wanton mode in which it was sometimes done.

"They write from Nottingham, that at the Assizes there two persons

were burnt in the hand, one of them in such a manner that he lost above 12 ounces of blood in the court, for which the executioner was reprimanded ; and the judge ordered the undersheriff to send a surgeon to the jail to take care of the man's hand, in which there is a hole to the very bone."

Another of the journals states that at the Lincoln Assizes a woman was sentenced to be burnt, for murdering her husband.

In the month of February, 1725, died the Right Hon. Sir John Pratt, Lord Chief Justice of England. This learned judge has been immortalized in legal verse, and is perhaps now chiefly remembered for the famous lines on a settlement case, quoted in Burn's *Justice of the Peace*.

"A woman having a settlement,  
Married a man with none :  
The question was, he being dead,  
If that she had was gone ?  
Quoth Sir John Pratt—her settlement,  
Suspended did remain,  
Living the husband : But him dead,  
It doth revive again."

Sir Robert Raymond, lately appointed a puisne judge of the Court of King's Bench, was selected to succeed Lord Chief Justice Pratt. Probably Sir Robert Raymond had obtained the promise of some higher elevation when he was promoted from the Attorney-Generalship, or Sir Philip Yorke would on this occasion have been raised to the Chief-Justiceship.

The Chancellorship was also soon afterwards vacant, to which Sir Peter King was elevated at the commencement of the following June, and raised to the peerage.

The Weekly Journal, of the 20th March, states—

"On Tuesday last The Right Honourable Sir Robert Raymond, Lord

Chief Justice of the Court of King's Bench, set out for his circuit ; and according to an ancient custom called at the King's Bench prison, from whence he was attended by Richard Mullins, Esq., his Lordship's marshall, and by above 100 gentlemen and tradesmen, beyond Dartford, in Kent."

The lawless condition of the country at this period, especially of the metropolis, and the extent to which robberies and depredations were carried on, is further shown by the following correspondence. The first of the letters was addressed to Sir P. Yorke, by the Solicitor to the Treasury.

"*Monday, Feb. 7, 1725.\**"

"SIR,—When I had the honor to wait on you last Saturday, you were pleased to direct me to give what acco<sup>t</sup> I co<sup>d</sup>, in writing, of that gang of ruffians who are so notorious for their robberies, and have lately murdered Tho<sup>s</sup> Ball, in Southwark, and wounded others. Their numbers daily encrease, and are now become so formidable, that constables are intimidated by their threats and desperate behaviour from any endeavour to apprehend them. Others who have often seen them together, and could give an acco<sup>t</sup> of several robberies committed by them, cannot be prevailed with to make oath thereof, for fear of being murdered by them.

"I have at several times had most of them in custody, on suspicion of felony, some have been prosecuted, but have been set at liberty thro' the imprudence of some gentlemen in authority, an account of which management I wo<sup>d</sup> gladly communicate, if it might be any ways useful towards preventing the like inconveniences for the future.

"Their names (as I am informed by those that have

\* Hardwicke MSS., Wimpole.

often seen them together) and their descriptions are in y<sup>e</sup> enclosed paper. I am, with respects,

“ Sir,

“ Yo<sup>r</sup> most ob<sup>t</sup> and humble serv<sup>t</sup>

“ THO<sup>s</sup> JONES.”

Among the “ names and descriptions ” in the paper alluded to is the following :—

“ Richard Jones, a tall thin man, dark complexion.”

Mr. Jones is further described in the same paper by the unenviable epithet of “ reputed thief,” and is also accused of keeping “ company ” of a very doubtful character. The following is his indignant remonstrance against these foul charges :—

“ MY LORD,\*—Having formerly been guilty of faults, many persons would endeavour to wound my present character. This I too tenderly feel, in understanding that I am represented as one of the cruel murderers in a late murder committed last Monday night in y<sup>e</sup> Old Mint, Southwark. For me to be charged wo<sup>d</sup> be the price of my reputation, but arm<sup>d</sup> with innocence I desire your Lordship’s commands for my appearance, to be cast by my accuser, or cleared by your Lordship. The justice imprison<sup>d</sup> in your noble breast will, I hope, influence you to order your hour, when with all ready obedience you’ll be waited on by your Lordship’s most humble serv<sup>t</sup>.

“ RICHARD JONES.

“ This is the copy of the letter I yesterday sent to Lord Townshend.

“ The Hon<sup>ble</sup> C. Delafaye.”

Sir P. Yorke was directed to prepare a proclamation,

\* Harawicke MSS., Wimpole.

which he afterwards did, stating that "on Monday y<sup>e</sup> 24th of Jan<sup>y</sup> bet<sup>n</sup> the hours of 6 & 7 in the evening, Thomas Ball was barbarously murdered in his own house, in the Mint, in Southwark," by four persons mentioned in the proclamation, and others unknown, who came there armed on purpose to commit the crime, and that information had been received that some of them had threatened the lives of several peace-officers, in order to deter them from doing their duty, and had appeared publicly in the streets with fire-arms threatening death to any that should come near them, and that they were also guilty of robberies and other crimes. In order to bring such notorious offenders to condign punishment, His Majesty offered his pardon to any, except the actual murderers, who should bring the offenders to justice, and a reward of forty pounds for each person apprehended. A description of the persons accused of the murder is appended to the proclamation.

One of them is stated to be "above six foot high, black eye-brows, his teeth broke before, hoarse voice, &c." Another is designated by "a large scar under his chin."\*

The whole country indeed at this period seems to have been in a state of extraordinary disorder and lawlessness. The public journals are full of details of murders and robberies of every interesting variety. Of the latter, depredations on the mails appear to have been very common. One of the papers states—

• "There were no Western letters yesterday, the mail being robbed on Monday last between 11 and 12 at night, in the road near Chinoek, in the midway between Crewkern and Sherburn, by one foot-pad, who carried off the bags belonging to all the towns between the Land's End and Yeovil."

Soon after this, the unfortunate Western mail was

\* Hardwicke MSS., Wimpole.

again robbed “by two foot-pads, who tied the post-boy, and carried away the Plymouth and Exeter bags.”

Finchley Common, Black Heath, and Bexley Heath, were at that time haunted by highwaymen, many of whom were well mounted and armed, and occasionally very well dressed. One of these, who was shot on the spot while attempting to rob the Canterbury coach on Bexley Heath, turned out to be “a young gentleman belonging to the sea, of good family.”

Sometimes armed expeditions went about the country and attacked the mansions and parks of the gentlemen resident there, and carried off deer and cattle.

In pursuance of a proclamation which was issued in 1719, offering rewards for the discovery of offenders, very large sums of money were paid out of the Treasury. A letter addressed to the Attorney and Solicitor-General from the Treasury, on the 19th of January, 1725, adverted to this circumstance, and stated the unsatisfactory fact that offenders seemed rather to increase than to decrease. The Attorney and Solicitor-General were therefore directed to consider what might be proper to be done to ease the King from the burthen of this great expense; for it appeared by a list which contained the value of things taken from the persons robbed, that rewards had been demanded and paid for the crafts and doings of “pick pockets and such slight dexterity’s,” more than anything else, for detecting of which practices it was conceived these rewards were never intended to be given.

But the most extraordinary of all the proceedings of a criminal nature which were instituted and carried on at this period, were those which it was found necessary to adopt against a high personage in the state, being no less than the Earl of Macclesfield, Lord High

Chancellor of Great Britain, and who had been the early friend and patron of Sir Philip Yorke, and the immediate instigator of his first promotion.

The first public notice of Lord Macclesfield in the newspapers about this time is contained in the *Weekly Journal* of 1724, giving an account of his election to a high public office of importance, when no suspicion of any misconduct appeared to exist against him, and his popularity and the estimation in which he was held seem to have been very great.

*“Stafford, Sept. 4.—*This day Thomas Earl of Macclesfield, Lord High Chancellor of Great Britain, was unanimously chosen Lord High Steward of this boro’, in the room of the Lord Viscount Chetwynd, to the great joy of the inhabitants, which was testified in a very extraordinary manner by the ringing of bells, bonfires, &c. In the evening there was a very numerous appearance of the gentlemen of the town to meet Francis Elde, Esq., (who stands candidate for member of Parliament at the ensuing election for this boro’) when long life, health, and prosperity to the new Lord High Steward and his son, the Lord Parker, and several loyal healths were drank with huzzas and acclamations, and the night concluded with the utmost demonstrations of joy for the happy change in the government of this corporation.”

About a month after this it will be observed that he returned to London, and resumed his judicial functions as usual.

*“October 10.—*On Wednesday the Right Hon<sup>ble</sup> the Lord Chancellor returned to town from his country seat, and the seals in Chancery began on the Thursday following.”

Parliament met on the 12th of November, when murmurs were afloat that something was not right as regarded the accounts relating to money in the court of Chancery.

Accordingly one of the journals of November 14th mentioned that the great seal was put in commission, and delivered by the King in council to certain commissioners,

who were Sir Joseph Jekyll, Master of the Rolls, and uncle to Lady Yorke, Sir Jeffrey Gilbert, and Sir Robert Raymond, and on which occasion His Majesty said to them, "You are fully informed of the state of the accòmpts of the Masters in Chancery. I earnestly recommend to you the taking effectual care that entire satisfaction be made to the suitors of the court, and that they be not exposed to any danger for the future."

Lord Macclesfield, however, appears still to have continued in favour at Court, as the *Weekly Journal* of the 23rd of January, 1725, states "Last Sunday the Earl of Macclesfield carried the sword of state before His Majesty to the chapel at St. James's."

The matter seems first to have been taken up in the House of Commons on the 23rd of January, when a petition was presented to the House from the Earl of Oxford and Lord Morpeth, as guardians of the Dowager Duchess of Montagu, a lunatic, complaining of the deficiencies of the accounts of the Masters in Chancery, and praying relief. On this a great debate ensued, during which it is stated some severe animadversions were made upon the conduct of Lord Macclesfield, but we have no record who the speakers were. The accounts were at this time in a course of examination before the Commissioners of the Great Seal. The *Weekly Journal* of February 6th mentions that "one of the Masters in Chancery is committed to the Fleet by the Commissioners of the Great Seal, for disobeying their orders to pay the money of orphans, &c., in his hands to the Bank of England."

On the 9th of February the King sent a message to the House of Commons, informing them what he had done as regarded putting the great seal in commission, and the inquiries that had been instituted; and he

also communicated to them the reports which had been made to him.

On the 12th instant the House of Commons proceeded to take into consideration the King's message and papers, after which, and a debate of some length, in which Sir P. Yorke does not appear to have taken part, the House resolved to impeach the Earl of Macclesfield of high crimes and misdemeanours, and a committee was appointed to draw up articles accordingly; a bill was also ordered to be brought in to indemnify the Masters in Chancery, on discovery of what sums they paid for their places, and which soon afterwards passed the House.

The London Journal of February the 14th mentions that "on Tuesday the two Mr. Bennets, and Mr. Kynaston, Masters in Chancery, gave security before the Commissioners for the custody of the great seal."

On the 18th of March, Sir George Oxenden reported to the House that the committee appointed had drawn up articles of impeachment against the Earl of Macclesfield. Two of the articles relating to offences committed in 1721, before the Act of Indemnity passed, it was moved by Mr. Conduit that the articles be recommitted, which was supported by Sir Philip Yorke, but no account of his speech is given. Sir Thomas Pengelly replied to him, and his argument we are told was "strenuously supported" by the Solicitor-General. The articles were at length agreed to, and subsequently carried up to the House of Lords.

The London Journal of March 27th says, "We hear that Mr. Taylor, who was solicitor to the Earl of Oxford, and to the late Bishop of Rochester, is the same to the Earl of Macclesfield." Another journal mentions his having "retained certain council learned in the law, against his trial."

The approach of the trial next became a topic of general interest. Sir Philip Yorke's excusal from taking part in the proceedings, at his own request, and which it is elsewhere said he had considerable difficulty in obtaining, it will be observed is here alluded to.

"*May 1.*—On Thursday comes on the trial of Tho<sup>s</sup> Earl of Macclesfield at the Bar of the House of Lords. His Lordship in his answer to the articles pleads the benefit of the late act, of grace for as many of the facts as can be comprehended within the said act, which will shorten the proceedings. The managers against my Lord are, we hear, the Solicitor-General, Serjeant Pengelly, Serjeant Lutwyche, Sir G. Oxendon, Mr. Onslow, Mr. Snell, &c. The Attorney-General desired to be excused for some particular obligations he had to his Lordship."

The preparations for the trial, and the mode in which it was to be conducted, are thus described :—

"Report being made in the House of Lords touching proceedings on impeachments, ordered a bench next the bar be taken away, and a stool be placed in its room on which the Earl of Macclesfield is to sit during his trial without his robes, and uncovered ; but the other Lords to sit in their robes, and their due places."

The trial itself lasted twenty days, but Sir Philip Yorke of course took no part in the proceedings. The charges against the Earl of Macclesfield were that he had connived at certain venal practices touching the sale of places of the Masters in Chancery, and at the embezzlement of the money of the suitors deposited with the latter. The *Weekly Journal* of June 4th describes the termination of the trial.

"Yesterday the Earl of Macclesfield being brought to the Bar of the House of Lords, was acquainted by the Speaker that the House having fully considered of his case, had found him guilty. Then the Earl acquainted the house with the ill state of his health, and offered something in mitigation of his offence, but proposed nothing in arrest of judgment, and being withdrawn, it was resolved on the question that the Earl be fined ; and after debate, the question was put, whether he shall be for

ever incapable of any office or employment in the State or Commonwealth. It was resolved in the negative, content forty-two, not content forty-two. Next the question was put that the said Earl shall never sit in Parliament, nor come within the verge of the Court. It was resolved in the negative, contents thirty-nine, not contents forty-five. Ordered that the fine the said Earl shall pay to the King be £30,000, and that he be committed to the Tower of London, and there continue till he pays his fine. In the debates on the last question, the Duke of Argyle, after taking notice how fully the charge had been proved against the said Earl, said, 'He had rather pay his share to the deficiencies, than be scandalised with the presence of a corrupt man, adding, that this corrupt man might sit in judgment upon his life or estate, or that of any of their Lordships, whom he beseeched to consider of what consequence one single vote might be, from the instance that happened just before, wherein the votes were equal.' The bishops mostly voted for the Earl."

After this he was committed a prisoner to the Tower, where we have an account of him in one of the newspapers a few days afterwards, which states, "the Earl of Macclesfield is confined in the same apartments the late Earl of Oxford was in, but has the liberty of the walks."

In about six weeks he managed to pay his fine, which was but a small part of the money he had amassed by his peculations, when he was discharged. And, to the disgrace of the times in which he lived, the infamy with which he had been thus covered debarred him neither from the favour of the great, nor even from that of his sovereign.

The conduct of Sir Philip Yorke with respect to his friend and patron the Earl of Macclesfield, on the occasion of his fall, has been sometimes made the subject of animadversion; but those who have censured him have not attempted to define exactly in what way he acted incorrectly, or to state what course it would have been proper for him to pursue. That he did right in not allowing himself, even in his official capacity, to be em-

ployed against this nobleman, can hardly be doubted ; though, had he not been so scrupulous, both excuses and precedents, and in one instance at least on very high authority, might have been found for this course ; and it is evident that the government by their hesitation to release him from this duty, did not consider that under the circumstances he should have refused to act in his capacity of Attorney-General, as the leading counsel against the unfortunate Earl. Ought he then to have stood forward as the champion and defender of Lord Macclesfield, who, on such an occasion required his assistance, and who had befriended him, and even incurred much odium by the extent to which he had done this, when such patronage was of the highest importance to Yorke, and to which he was actually indebted for his present high position ? Independently of the anomalous situation in which, as the first law-officer of the Crown, he would have been placed by this course, there were two great objections to it. In the first place, by allowing the Attorney-General to appear on behalf of Lord Macclesfield, the government would seem as though they desired to shelter him ; or at any rate it could not be supposed that they were very anxious that the charge should be fully investigated, as the case imperatively demanded. And, in the next place, connected as Sir Philip Yorke was with Lord Macclesfield, it might have afforded a belief, had he thus stepped out of his course to defend the Earl in such a case as this, that he had been connected with him in the nefarious practices of which he was accused, a suspicion of which has never yet been even hinted at by any one. True, indeed, it is that Lord Macclesfield's patronage of Yorke, and more especially his promotion of him to the Solicitor-Generalship, excited odium against the former, and may have contributed to add fuel

to the flame which was then raging against him ; but this, though it deserved his warmest gratitude, could not demand of him the neglect of his duty, either public or private. A man is in honour bound to defend his friend, above all one to whom he is under obligations, against unjust attacks,—and this Sir Philip Yorke did not fail to do openly in the House of Commons, where he endeavoured to procure a miscarriage of the prosecution by opposing a recommitment of the articles of impeachment, as already stated ; and where also he vigorously repelled the personalities of Sir Thomas Pengelly, and other private enemies of the Chancellor, during the very heat of the contest, and when his friend's cause was most overwhelmed with odium ;—but he is not bound on all occasions to stand forward as his friend's supporter where he has been guilty of base and unjustifiable conduct in cases in which the other had no concern. Besides, the patronage which Lord Macclesfield had bestowed on young men of merit was not only no part of his offence, but formed the only substantial portion of his defence, or rather extenuation of the ill conduct of which he had been guilty. Had Sir Philip Yorke resigned the Attorney-Generalship, and devoted himself to the cause of his fallen patron, he could have had no chance of serving him, the facts of the case being clear beyond a doubt, as was also the gross misconduct of Lord Macclesfield in acting as he did. And the Attorney-General by giving up his office must have necessarily lost a large share of the influence which he possessed while holding it, and which he was enabled to exert in mitigation of the efforts of the enemies of Lord Macclesfield.

On the whole, therefore, I cannot but think Sir Philip Yorke's conduct in this instance was just what it ought to have been. He refused to appear against his

patron, in which he acted quite right ; although, after all, it is undeniable that Sir P. Yorke's merits well deserved all the favour he obtained from Lord Macclesfield. But though he could not, especially in his official position, stand forth as his friend's advocate, or the defender of his misconduct, he never hesitated openly and at all hazards, to shelter him from unjust obloquy or accusation.

The best proof, indeed, of the correctness of this view of the case is afforded by the behaviour towards Sir Philip Yorke of Lord Macclesfield himself, who at least would not be unduly prejudiced in favour of his conduct here. The good feeling between them continued unbroken, and Lord Macclesfield to the end of his days regarded him as one of his friends, and continued to correspond with him as such.

The letter which follows, from the Earl of Macclesfield to Sir Philip Yorke, appears to have been written soon after the fall of the former. Its object is to secure the good offices of the Attorney-General on behalf of a person of scientific ingenuity, who was desirous of obtaining a patent for an invention of importance, about which Lord Macclesfield had been interested.

“ SIR, \*—A petition of Mr. Fallowfield for a patent for an invention of his for smelting, or melting down iron-stone into ton iron or pig iron, & then forming it into bairs, &c., by y<sup>e</sup> help of fuel never before prepared or used for y<sup>e</sup> purpose, having been by His Majesty referred to you, I beg leave to trouble you with two or three lines upon y<sup>e</sup> subject, to beg of you to give it all dispatch possible. I have known y<sup>e</sup> p'son some years, & when he communicated the thing to me, I own was extreemely pleased w<sup>th</sup> it, and had great confidence that it wou<sup>d</sup> suc-

\* Hardwicke MSS., Wimpole.

ceed, & gave orders to have tryal made of it w<sup>th</sup> some ironstone of my own ; y<sup>e</sup> success answered my expectation, & I am satisfyed that he has perfected y<sup>e</sup> invention, and y<sup>t</sup> y<sup>e</sup> thing is wholly new. He intended to have applyed for a patent last summer, but I persuaded him to let it alone till I shou<sup>d</sup> come to town, y<sup>t</sup> I might be able to assist him. And since I came to town I have obtained my Lord Townshend's favour to forward it, & have engaged Mr. Elphinstone to follow it for him. I intend to wait upon my Lord Privy Seale, & on my Ld. Chancellor before it comes to them. And wou<sup>d</sup> have waited upon you, but y<sup>t</sup> I thought at this time I shou<sup>d</sup> give you less trouble by writing. It will certainly be of publick advantage, and will produce better iron than can be made by pitcoal, which way soever prepared, & in whatsoever sort of furnace made use of. I y<sup>e</sup> rather choose to mention this, because I have heard that a patent is passing, or has lately passed for doing it by pitcoal w<sup>th</sup> an air furnace ; to satisfy you y<sup>t</sup> this invention has no resemblance to y<sup>t</sup>, nor any thing in common w<sup>th</sup> it, I earnestly desire your favour to him in despatching it, and ask yo<sup>r</sup> pardon for detaining you so long. I am, w<sup>th</sup> y<sup>e</sup> greatest respect and truth,

“ Sir,

“ Your most faithful & most obed<sup>t</sup> servant,

“ MACCLESFIELD.”

On the 20th of April, 1725, a petition was presented to the House of Commons, by Lord Finch, on behalf of Henry St. John, late Viscount Bolingbroke, praying that the execution of the law with respect to his forfeitures might be suspended, as a pardon had suspended it with respect to his life. Mr. Walpole signified to the House, by His Majesty's command, that, seven years before, the

petitioner had made his humble application and submission to the King, with assurances of duty, allegiance, and fidelity ; that from his behaviour since that time, His Majesty was convinced of his being a fit object of his mercy ; and consented to his petitioning the house. The petition being read, Lord Finch moved that a bill be brought in according to the prayer of the petition, which was seconded by Mr. Walpole, who declared himself fully satisfied that the petitioner had sufficiently atoned for his past offences, and therefore deserved the favour of that House, so far as to enable him to enjoy the family inheritance that was settled upon him, which, according to the opinion of the best lawyers, he could not do by virtue of His Majesty's pardon without an act of Parliament. This was confirmed by Sir Philip Yorke, and also by Sir Clement Wearg. Mr. Methuen, however, strongly opposed the bill, and was supported by Sir Thomas Pengelly, Serjeant Miller, and others. The question was carried in the affirmative, by 231 votes against 113. The bill was subsequently introduced, and passed. It was prepared by Sir Philip Yorke, and the original draught of it is still among his papers, as are also copious notes in his handwriting relating to different points connected with the business.

On the 24th of July, Bolingbroke returned to England, wholly dissatisfied with the reversal of the forfeiture which he had so repeatedly and earnestly solicited. In a letter to Swift he says :—

“ Here I am, two-thirds restored, my person safe (unless I meet hereafter with harder treatment than even that of Sir Walter Raleigh); and my estate, with all the other property I have acquired, or may acquire, secured to me. But the attainder is kept carefully and prudently in force,

lest so corrupt a member should come again into the House of Lords, and his bad leaven should sour that sweet untainted mass.”\*

An anecdote is related by Mr. Jeremy Bentham, of a conversation between Lord Bolingbroke and Sir Philip Yorke about this period, which goes to show the opinion of that great wit and genius of the natural abilities of the latter.

Sir Philip Yorke, as he was possessed of great convivial pleasantry, to relieve himself under the pressure of business in his profession, and his engagements in public affairs, even while he was His Majesty's Attorney-General, would sometimes enjoy himself in the company of men of genius, like himself; and once, upon his dining with Mr. Taylor (commonly called Joe Taylor of Bridewell, then member of Parliament for the borough of Petersfield, in Hampshire) at his house at Stanmore, in Middlesex, where Lord Bolingbroke made one of the company; his Lordship took occasion jocularly to ask Sir Philip Yorke, whether he was never a rake in his younger days. Sir Philip's reply was that he must confess he never was a rake, for that indeed he was so early immersed in business, that he never had any time to be one; upon which Lord Bolingbroke expressed himself to be not a little pleased with the reason Sir Philip had given him—for, said his Lordship, he was persuaded no one could ever distinguish himself, and make his way in life in the manner Sir Philip had done, unless he had been a rake, or at least had the seeds of a rake in him. Such a compliment as this, however Lord Bolingbroke might apply it to Sir Philip Yorke, the rest of the company present could not but understand with a view of

\* Coxe's Walpole; Swift's Works.

making a still greater compliment upon himself, as showing abilities and rakery were so conspicuously united in Lord Bolingbroke's own character. This account of the conversation that passed between Lord Bolingbroke and Sir Philip Yorke, continues Mr. Bentham, I had from Mr. Taylor himself, at whose house and in whose company it happened.\*

Notwithstanding the intense occupations in which Sir Philip Yorke must have been necessarily engaged during the period that he filled the office of Attorney-General, he still found leisure to keep up his classical acquirements, and to cultivate the acquaintance of men of genius of the day.

With respect to the former, something perhaps was due to the letters of his early and excellent preceptor, Mr. Morland, though doubtless far more to his own taste, and natural genius, and turn of mind.

A Latin letter was written in 1724 to the celebrated Dr. Samuel Clarke, Rector of St. James's, Westminster, by Sir Philip Yorke, requesting him to correct an inscription on a monument to one of the members of the Earl of Bradford's family, into which family, Mr. James Cocks, the brother of Lady Yorke, had recently married. The draft of this letter is still among the Hardwicke papers.

In reply to this letter, Dr. Clarke wrote another in Latin, on which is indorsed, in Sir P. Yorke's handwriting, this note: "Dr. Clarke's answer, which he afterwards told me was the only Latin letter he had ever writ in his life."

The following exquisite epigram is by tradition in his family ascribed to Sir Philip Yorke, as having been composed by him to accompany the gift of a hare. It is

\* Cooksey's Anecdotes.

impossible to retain the wit and point of it in a translation :—

“ Mitto tibi leporem ; gratos mihi mitte lepores.  
Sal mea commendat munera ; vestra sales.”

Some time after Sir Philip Yorke was promoted to the office of Attorney-General, an important cause, in which the Duchess of Hamilton was interested, came before the Court of Chancery, on which occasion she was very desirous that this distinguished advocate should be retained as one of her counsel. She accordingly herself addressed two letters to him on the subject. In one of them, written from East Acton, she mentions having called at the Attorney-General's chambers at Lincoln's Inn, but did not find him at home. This winning lady-client proceeds—

“ You know a cause of mine without you must never be. If it were, I sho<sup>d</sup> break my heart. If you could spare so much time to dine here, I shou<sup>d</sup> take it as a particular favor, and will flatter myself you'l not give me the mortification to deny me. When you come to Kensington, 'tis but two miles further. Lett me have a line to tell y<sup>e</sup> day, and I'll have one to meet you will divert you.

“ Pray say nothing of me to either of y<sup>e</sup> Hamiltions, for they're more malicious to me than ever, and attribute y<sup>e</sup> King's refusing to see Duke Hamilton most unjustly to me and S<sup>r</sup> Robert carrying so coldly to his Grace, when God knows 'tis his own actions has brought y<sup>e</sup> upon him, w<sup>ch</sup> I doubt not vont be soon forgot, as appears but too plain to all y<sup>e</sup> world by His Majesty's carriage to him since he did permit him to come to court, and when he took leave before he went to Scotland.”\*

\* Hardwicke MSS., Wimpole.

The following allusion to Lord Macclesfield is contained in the same letter:—

“Between you and I, I’m glad I can tell you y<sup>t</sup> our friend E. Macclesfield has been so graciously received, and y<sup>t</sup> things, I can assure you, are like to go so well there. This, no doubt, you know, and I don’t question are glad of as well as I.”

It would appear from a letter written by Lord Townshend to Sir P. Yorke during January, 1725, that the Attorney-General’s reputation was at this time very high. His Lordship says—

“Governor Harrison has pressed me to desire you to be of councill for his brother, S. Harrison, in a cause in the Exchequer. Your great abilities draw these requests upon you, and the persuasion people have of the advantage you are to their cause, makes them take all methods to engage you on their side.”\*

The following note is in the handwriting of Sir Philip Yorke:—

“30<sup>th</sup> July, 1725.—Memd.: Mr. Pigot and Mr. Harcourt this day attended me on behalf of the Duchess of Buckingham, and prayed an information might be filed against Mr. John Ward for forging a note and publishing y<sup>e</sup> same, knowing it to be forged. I told them the note must be produced to me before I could give any directions, w<sup>ch</sup> they promised sho<sup>d</sup> be done this evening.”†

Mr. Ward appears to have been a member of the House of Commons. He was eventually tried before a jury for the offence in question, convicted, and sentenced to stand in the pillory, and was fined £500, and required

\* Hardwicke MSS.. Wimpole.

† Ibid.

to find security for his good behaviour for seven years. He was also expelled from the House of Commons. Sir P. Yorke conducted the prosecution, at the particular desire of the Duchess herself, several of whose letters to the Attorney-General on this occasion are among his papers. In one of them, written before the trial, she tells him—

“I am sorry to find that you are not set down in y<sup>e</sup> number of my son’s counsell in our cause against one Mr. John Ward. It was my direction that you sho<sup>d</sup> be retained, & I hope it is not yet too late for us to receive the advantage of your assistance in an affair wherein I am sure there is justice enough on our side. I shall think myself unlucky in missing your being one of those who are to express the merits and hardships of our case on y<sup>e</sup> day of our tryal.”

The Duchess of Buckingham wrote thus to Sir P. Yorke on the day after the trial :—

“I sent early this morning to inquire how you did, after soc great a fatigue as you suffered yesterday. I cannot help expressing this way how very sensible I am how much you contributed to y<sup>e</sup> success of that day, & by which, Sir, you have not only done a private but a publick good; yet, had y<sup>e</sup> event turned in Mr. Ward’s favour, I sho<sup>d</sup> never have thought that an entire ill day in which I had an opportunity of hearing soc much justice exprest with such eloquence as yours.”

The same illustrious lady in a postscript to another letter to Sir P. Yorke narrates the following :—

“I must tell you, y<sup>e</sup> other night y<sup>e</sup> King, in y<sup>e</sup> drawing room, asked me about this tryal, w<sup>ch</sup> I gave him some

account on, & he was pleased to say in any country but ours Ward would be hanged, & deserved it. This I only repeat to you, tho' one or two who stood by heard it, & thought it, I believe, a very just remark ; yet y<sup>e</sup> pillory satisfies me."

Mr. Ward was subsequently tried and convicted of another offence of great magnitude, for which he suffered a long imprisonment. During the period of his incarceration, Pope mentions in one of his letters that he occupied his time in poisoning animals of different kinds.

The letter which follows, from Sir J. Jekyll to Sir Philip Yorke, is written in a very characteristic style, and refers to some untoward matters in which old Mr. Cocks, the father of Lady Yorke, and his son were concerned.

. . . . \* "I am going another journey on Friday next to Worcester, which I doubt is but too necessary, considering the ill situation of my cosen Jack's affair ; for according to a letter I received from Justice Tracey the day I left the Bath, it sticks at my brother Cocks's not making any proposal, tho' in his letter to the Judge (communicated to Mr. Cocks at Castleditch) he promised to doe it. I wish my brother's irresolution and inability to attend to his affairs will permit my going over to be of any consequence. I hope you will consider a busy time is coming on, and you will take as much Belbar air, which I am very glad you like, as you can ; and I don't doubt but you will have the ready consent of Master Philly† to bear you company. . . . Mr. Andrews has appointed to goe over with Mr. Butler, of this countrey, to view your proposed purchase. I shall

\* Hardwicke MSS., Wimpole.

† Sir P. Yorke's eldest son.

rejoice if it answers expectations, that we may have you in our neighbourhood.

*"Dullington."*

A letter from a person on a matter of business, in this part of the country, to Sir P. Yorke, about the same time as the above, states in a postscript:—

"Old Master Cocks seems resolved to be in London next weeke."

And another, soon after this, relates the further progress of the Attorney-General's eccentric father-in-law:—

"Old Master Cocks was resolved to go for London, and all the art of man could not stop him."

Sir P. Yorke had been for some time desirous of investing the money, which his large professional practice had brought him, in the purchase of a landed estate. His main wish was to make an addition to the family inheritance near Dover, which, however, no opportunity was offered of doing to a large extent. He therefore employed some of his friends, among them Mr., afterwards Lord Chief Justice Lee, and Mr. Baron Comyns, to look out for him, and endeavour to obtain a landed property, with a mansion, in some other part of the country. An opportunity offered for this during the summer of the year 1725, when the manor and estate of Hardwicke, in Gloucestershire, referred to in the foregoing letter of Sir J. Jekyll, was disposed of to the Attorney-General by the owner of it, Mr. Trye, a gentleman of ancient family, who was connected by marriage with the noble house of Berkeley. The estate in question appears to have possessed the recommendation to Sir P. and Lady Yorke of being near the domains of the Cocks's

and the Jekylls; nevertheless, some of the other rural neighbours of the Attorney-General seem not to have had that respect for the laws of their country which the occasional presence of this great officer of the Crown ought surely to have inspired. Before the conveyance of the property was executed, a person, apparently the agent who had had the management of the estate, wrote to Lady Yorke, "there should be some care taken of the coppices, for my friend in Gloucester sends me word that severall men have come with hatchetts, cut down the wood in the coppices, taken it away, and don a great deal of damage."

The mansion, which was called Hardwicke Park Court, was an antique structure, in the style common to manor houses of the time of Queen Elizabeth. The entrance was through a court-yard; and the whole building was surrounded by a moat. The park was not extensive, but well wooded, and an ornamental canal was cut through it. In front of the house was a flower garden, laid out in the formal style of the period in which Sir P. Yorke became the owner of this domain, with yew trees cut into various shapes placed about it, and long straight walks running down and across it. A view of Hardwicke Park Court, as it then stood, is given in Atkyns's History of Gloucestershire. In the park some well-fed deer are seen reposing, and two stately swans are sailing round the moat; on one side of the mansion, in the garden, a fountain is represented rising out of a circular basin, in which, perhaps, the imaginative reader may espy gold and silver fish to be glittering. Some human figures are also introduced into the plate, with cocked hats and laced coats, who appear bent on an equestrian expedition, if their spirited

steeds will allow them to mount. Whether the company in question are intended to represent the Attorney-General, the Master of the Rolls, and "Old Master Cocks," the artist has failed to inform us. Twenty-four years' purchase was agreed upon by Sir P. Yorke, as the price of the estate, which was valued at about £1000 per annum. Sir Joseph Jekyll and Mr. Cocks seem to have been consulted by the Attorney-General on this occasion. Sir P. Yorke's agent assured him that he had got a very good bargain; and in a postscript to a letter mentioned a circumstance which might be consolatory to the new landowner, as serving to afford him a better opinion of his country neighbours than their depredations on him might have led him to entertain:—

"I perceive Gloucester is a very loyall citty, for coming from Mr. Trye's on Sunday to Church to Glouc', I found y<sup>e</sup> mayor had gott all y<sup>e</sup> companys to attend him to Church, where was preached a very loyall sermon. In the evening I gott home."

In a letter which Sir P. Yorke wrote to Sir Joseph Jekyll shortly after this, he mentioned having sent the Master of the Rolls a present of half a buck, which we may suppose came from the park at Hardwicke.

There is a singular epistle among Sir P. Yorke's papers, which must have been addressed to him soon after he became the proprietor of Hardwicke, and is from a person resident in the parish, informing him that the "Vicker," as the writer terms him, was just beginning to collect his tithes, and that several of the parishioners had resolved to resist him; in which fraudulent undertaking His Majesty's Attorney-General was respectfully invited to join.

Owing to the number of judgments and incumbrances

on the estate, the completion of the purchase seems to have been a good while delayed, though concluded in the most amicable manner on both sides. Mr. Trye, the late owner of the Hardwicke estate, continued to reside in the village about a year after he had sold the property, and invited Sir Philip and Lady Yorke to stay with him on their first going down to Hardwicke after it became theirs, which they accordingly did. They returned to London by Oxford, spending a few days at this distinguished seat of learning, when they were entertained in Christ Church, by Dr. Stratford.

Mr. Trye, soon after their visit to him, got into a scrape with one of the neighbouring gentlemen while following a hare with his harriers over Sir P. Yorke's land, which it appears the latter permitted him to do; and he wrote to the Attorney-General for his advice and assistance in the matter.

The property in the neighbourhood of Dover proved a source of some trouble and perplexity to Sir P. Yorke, judging from the numerous letters on the subject of dilapidations and arrears, which were addressed to him from Dover at this period.

The following description of the condition of affairs on the estate, which is contained in one of the letters referred to, is far from satisfactory.

“ Mr<sup>s</sup>. Yorke desires me to give you this account of your tenant, Matson, who we feare is not like to prove a very good one, for at Michaelmas he will be in arrear almost two hundred poulds; and he gives us no hopes of his lessening the debt. He has already put his oldest son into Reath Farme, and now proposeth to quit Wanston at Michaelmas, to two other of his sons, and they to be bound to you for his debt, which we take to be but an

indifferent proposall, for 'tis to be feared they are all too much engaged for one another already.

“The family are all well, and hope to see you down here this summer.”

The letter which follows was addressed to Sir P. Yorke by Mr. Tickell, the poet, and contributor to the *Spectator*, who was at that time Secretary to the Lords Justices for Ireland. From it will be seen the opinion entertained by this great genius of the talents and conversational powers of the Attorney-General.

“*Dublin Castle, Nov. 4, 1725.*”\*

“SIR,—Mr. Broughton, whom my Lord Lieu' has sent over with the Irish money Bill, and some private ones, has so often heard me boast of being known to you, that he has desired me to introduce him to you by a letter. He indeed thinks too highly of my interest in you, in imagining that my recommendation may incline you to give him the utmost dispatch in his business. But I will take upon me to say that his conversation is so agreeable, that for your own sake you will endeavour to put a speedy end to the serious part of it, and fall into that for which you have so nice a taste. I should not presume to take this liberty, if I did not honour you more for your humanity, than others can for your great talents; and if upon that account I was not with the truest respect,

“S<sup>r</sup>,

“Your most humble and obedient servant,

“THOS TICKELL.

“Mr. Attorney-General.”

During the month of April, in the year 1726, the Solicitor-General, Sir Clement Wearg, died of a fever,

\* Hardwicke MSS., Wimpole.

after a very short illness. With this learned and able member of the profession, Sir Philip Yorke had lived on terms of the strictest friendship. Sir Clement Wearg was succeeded in the office of Solicitor-General by Mr. Charles Talbot, son of the Bishop of Durham, and Member of Parliament for that city, who was universally respected for his amiable manners and accomplishments, as well as distinguished for his general abilities, and professional skill. He was some years the senior at the bar of Sir Philip Yorke.

A question of public interest was this year submitted to Sir Philip Yorke by the Bishop of London,\* to which the Attorney-General replied in the following letter, which embodies also the question itself. The draught of it is indorsed in his own handwriting, "Letter on B<sup>p</sup> of L.'s question ab<sup>t</sup> Henley's oratory."†

"MY LORD,‡—I received the following question from

\* Dr. Gibson.

† Henley is the hero celebrated by Pope in the following lines in the *Dunciad* :—

"High on a gorgeous seat, that far outshone,  
Henley's gilt tub, &c.

    . . . . .  
In-brown'd with native bronze, lo! Henley stands,  
Tuning his voice, and balancing his hands;  
How fluent nonsense trickles from his tongue!  
How sweet the periods, neither said nor sung!  
Still break the benches, Henley, with thy strain,  
While Sherlock, Hare, and Gibson preach in vain,  
Oh great restorer of the good old stage,  
Preacher at once, and zany of the age."

"J. Henley, the orator. He preached upon the Sundays on theological matters, and on the Wednesdays upon all other sciences. Each auditor paid one shilling. He declaimed some years against the greatest persons, and occasionally did our author that honour."—*Note to Pope's Works*.

‡ Hardwicke MSS., Wimpole.

Mr. Crackerode, with your Lordship's commands to return an answer by letter to y<sup>r</sup> self:—

“ Q. Whether a minister, who composes and publishes a liturgy of his own, consisting of part of the Common Prayer of y<sup>e</sup> Church of England, and of such additions and alterations as he thinks fit to make, be warranted by the Act of Toleration to open a place for the exercise of a publick worship, according to such liturgy?”

“ Upon consideration of this question, both with regard to the Act of Uniformity and the Act of Toleration, I am of opinion that the case of a minister using a liturgy or prepared form of prayer of his own composing, does not differ from that of any other Protestant Dissenting minister, but is equally within the benefit of the said Act of Toleration, 1 W. & M.; provided such minister complies with the requisites of that Act, by taking the oaths and making the subscriptions thereby prescribed, and having y<sup>e</sup> place of his congregation certified to y<sup>e</sup> bishop of y<sup>e</sup> diocese, archdeacon of the deanry, or justices of peace in their quarter sessions, and there registered according to y<sup>e</sup> direction of y<sup>t</sup> Act. As to y<sup>e</sup> mixing some parts of y<sup>e</sup> book of Common Prayer with this private composition, of which the query takes particular notice, I find nothing in those laws whereby it is prohibited.

“ I am, &c.,

“ P. YORKE.

“ Aug. 1, 1726.”

The famous Duke of Wharton at this time excited the anger of the Government against him, by his treasonable conduct and conversation, of which an account was sent to England by Mr. Kean, the British Consul General at

Madrid. On this the Duke was recalled to England by a bill under the sign manual, which he refused to obey, and by a document under his hand and seal declared his renunciation of the title of Duke of Wharton, which he had received from King George. The papers relating to his conduct were laid before Sir P. Yorke by the Duke of Newcastle, with directions to indict him for high treason if there appeared sufficient ground. It seems, however, that he never returned to this country.

During the year 1726, Mr. Samuel Burroughs published "The History of the Chancery; relating to the Judicial Power of that Court, and the Rights of the Master." Lord Chancellor King rewarded the author of it with a mastership in Chancery. It is asserted\* that "this History was answered, but anonymously, by Sir Philip Yorke, at that time Attorney-General, in so able a manner, that Mr. Burroughs was advised by one of his friends to call in the assistance of Mr. Warburton," afterwards Bishop of Gloucester, who had been formerly a solicitor at Newark, and who produced a reply in 1727, under the title of "The Legal Judicature in Chancery stated." Mr. Burroughs put the materials into Mr. Warburton's hands, and spent some time in the country with him during the compilation of the work. The title of Sir Philip Yorke's book is, "A Discourse of the Judicial Authority belonging to the office of Master of the Rolls, in the High Court of Chancery." It is a small octavo volume, containing 151 pages, and was printed in 1727, by W. Bowyer, and "sold by R. Williamson, near Gray's Inn Gate, in Holborn." The introductory chapter commences thus:—

"The laws are the birthright and inheritance of all the subjects of England, who are therefore nearly concerned in the jurisdiction of

\* Nichol's Literary Anecdotes.

courts of justice, especially of the four great courts at Westminster, the main channel through which the benefit of those laws is conveyed to them."

The author then proceeds to give a general outline of the history and origin of the different courts, and treats on the constitution and jurisdiction of the Court of Chancery more particularly, and points out the advantages arising therefrom, on which he remarks :—

" Upon these considerations I dare affirm, that whoever hath a mind to scheme out a new Court of Chancery, and shall effect it, will fall far short of that admirable contrivance which appears in the old."

He then shows that the allowing such a judicial authority to the Master of the Rolls, in common with the Lord Chancellor, as he maintains to exist, cannot at all derogate from the just power of the Lord Chancellor, and remarks :—

" Whilst I am prosecuting this design, I cannot but observe with satisfaction, that I am defending the properties of great numbers of my fellow subjects, which depend on the validity of decrees and orders made by Masters of the Rolls sitting alone."

Sir Philip Yorke, in this work, illustrated his different propositions in the several chapters with very great learning, and knowledge of the early judicial history of our courts, citing as his authorities manuscripts and records in the Tower and elsewhere, as well as ancient printed treatises and decrees.

This book, though said to be written in reply to one which had recently appeared on the same subject, contains no allusion to the other; and it is probable, from the circumstances and correspondence already referred to, that the topics in it had for some time occupied the writer's mind. And indeed the research which it evinces could not have been accomplished in the short period

which elapsed since the publication of Burroughs's work. Much of Sir P. Yorke's style, as shown by his correspondence, is discernible in the treatise before us, in the elegant structure of the sentences, and graceful manner of turning them ; as also in the deep thought occasionally displayed, and the forcible way in which he puts many of his arguments.

A second edition of the work was published in the following year, which contained a preface of 127 pages, and considerable additions. The preface was written in reply to the two books entitled "The History of the Chancery," and "The Legal Judicature in Chancery stated," the arguments of which it answered very elaborately.

In this preface it is stated that a second edition of the "History," corrected and enlarged with further proofs, was advertised as intended to be published in a few days, but was afterwards suppressed on the coming out of the first edition of the "Discourse." Several passages in the body of Sir P. Yorke's work were re-written in the new edition, but the general arrangement of the whole remained unaltered.

By some the treatise in question has been attributed to Sir Joseph Jekyll, and it has been also asserted to be the joint production of that distinguished judge and of Sir Philip Yorke. It is not at all unlikely that Jekyll may have aided the former on this occasion, to whom Sir P. Yorke would almost naturally resort; and probably much of the information contained in the book, especially that supplied from early records in the Rolls Court, was communicated by Jekyll. As regards the authorities quoted from, in the old law treatises and reports, no one was better versed in this subject than Sir P. Yorke. The general style of the work, and more especially in those passages which admit fully of an exhibition of this, as

observed before, accords much with that of Sir P. Yorke, while it differs greatly from that of Sir Joseph Jekyll, if we may judge of this from his letters. I have not been able to discover among Sir P. Yorke's papers any draught of the work in question, but there are very copious notes in his own handwriting on a MS. Treatise of Lord C. J. Hale, of Jurisdiction, and some extracts from it in the same hand.

An allusion to this book is contained in Bishop Hurd's life of Bishop Warburton, from which it appears that the authorship of both works was concealed. But some years after, Mr. C. Yorke being in conversation with Warburton, the latter mentioned to him his share in the composition of the "Legal Judicature," when to the able divine's great surprise, he was first informed that his antagonist had been no less a person than Sir Philip Yorke.

We find Sir Philip Yorke taking part in the debates in the House of Commons, which occurred in the session of 1727, on Mr. Scrope's motion for a vote of credit, and on a motion of Sir William Young, respecting the supply, but no account is given of the arguments of the different speakers separately.

On the 14th of June, an express arrived from Hanover with the news of the death of King George the First; on which His Majesty King George the Second, hitherto Prince of Wales, came immediately from Richmond, where he had received the intelligence, to Leicester House. The members of the Privy Council being assembled here, were resworn. The new King declared it to be his firm determination to preserve the constitution in Church and State, and to cultivate those alliances with foreign powers which his father had made. He then took and subscribed the usual oaths, and the next day was proclaimed King. Sir Philip Yorke was reappointed Attorney-General, and

the different great officers of state continued in their respective employments.

During the year 1727, Sir Philip Yorke removed from Lincoln's Inn Fields, and took a house in Red Lion Square; but his chambers he still continued in the Old Buildings, Lincoln's Inn Square, having given up those in the Middle Temple soon after he became Attorney-General.

Parliament was dissolved in the month of July, in this year; and on the 10th of August we find a letter to Sir P. Yorke from his friend the Duke of Newcastle, relating to the Attorney-General's re-election for Scaford. The Duke tells him:—

“I hope you will believe I would not putt you to the trouble of coming down to your election, did I not think it absolutely necessary for the support of your interest. For tho' there is no appearance of an opposition, att least att present, should the people think themselves slighted by your absence, nobody can tell what consequence it might have; and I really hope your being out of town two or three days cannot be of any prejudice to y<sup>e</sup> King's affairs, or any body else. We intend to have y<sup>e</sup> Scaford election on Saturday se'nnight, y<sup>e</sup> 19th instant, so that if you will be so good as to be att Haland the day before, you may well be in London again early on Monday morning.”\*

Sir P. Yorke was re-elected for Scaford without opposition. In the middle of September, his old friend Mr. W. Lee wrote to him congratulating him on his election with the following expressions of goodwill.

“I received y<sup>rs</sup> of the last post, with most hearty

\* Har. &wicke MSS., Wimpole.

thanks for y<sup>r</sup> indulgent inclinations to an old acquaintance, who thinks it no small happyness to be thought of so kindly by a gentleman he soe much esteems and admires. . . . I congratulate you on y<sup>r</sup> election to Parliament, and hear with pleasure of y<sup>e</sup> good health of y<sup>r</sup> self and family, and begging my wife's and my own most humble service to y<sup>r</sup> lady, with tenderest wishes for my hopefull Godson, am, &c."\*

Mrs. Yorke, the mother of the Attorney-General, died at Dover during the month of October, in this year. No letter containing any account of the event is to be found among her son's papers, and indeed just at this period there is a blank in the Dover correspondence, which had been generally kept up pretty constantly between the Attorney-General and his relatives there. From this, as well as from a letter to him from his mother shortly before this time, earnestly desiring him to come and see her once more, it may be inferred that on this melancholy occasion Sir Philip Yorke was at Dover. A monument was afterwards put up by him in the church of St. James, Dover, to the memory of his parents, which simply records their names, and the periods of their decease; and concludes with the motto, "*Quos amor in vita conjuxit, non ipsa mors divisit.*"

Great disturbances arose in September and October of this year in Gloucestershire, in the immediate neighbourhood of Sir P. Yorke's estate, owing to mobs of people arising to pull down the turnpikes, which had lately been erected. A letter from one of the magistrates in that part of the country, relating to the riots, says:—

"The actors of these mischiefs could not be apprehended, and but few of them, though very numerous,

\* Hardwicke MSS., Wimpole.

discovered; so that we were obliged to have recourse to the sheriff and an inquisition of the countrey, who upon proper summons attended the service of their countrey, and made their presentments, but in a manner that does evidence what favour they extend to their neighbours."\*

The robberies of persons in the streets of London and Westminster had of late become so frequent, that it was deemed expedient to issue an order in Council, on the 26th of February, 1728, to the Attorney-General, to prepare a proclamation for putting the most speedy and effectual stop to these evil practices.

On the 15th of March, in the same year, Sir Philip Yorke was also directed, by the King's command, to peruse and settle the draught of an instrument for renewing his late Majesty's letters patent, establishing in each university a professorship of modern history.

The following letter from Mr. Jocelyn to Sir P. Yorke affords evidence both of the high esteem in which he was held in private, as also of the favourable opinion with which he was regarded in his public capacity.

"DEAR S<sup>r</sup>,†—I was unwilling to interrupt you in term time, in making my acknowledgments for your last favour. I am infinitely obliged to you for y<sup>e</sup> kind remembrance you retain for an old acquaintance, and for the regard you were pleased to shew to my recommendation. I have sensibly felt the good effects of it, and shall always most gratefully acknowledg the favour. I dare say my Lord Carteret has given you an account how much the publick is indebted to you, both for y<sup>e</sup> dispatch, the care, and the good nature with which you

\* Hardwicke MSS., Wimpole.

† Ibid.

finished our bills. There never was a session that ended with such satisfaction on all sides, and your name was treated both publickly and privately with y<sup>e</sup> utmost regard, and I must own I had an unspeakable satisfaction in the unanimity with which every body agreed to do justice to your merit. I heartily wish y<sup>e</sup> continuance of your health and every thing that is agreable to you, and am, with great truth,

“ D<sup>r</sup> S<sup>r</sup>,

“ Y<sup>r</sup> devoted and affectionate humble serv<sup>t</sup>,

“ ROB<sup>t</sup> JOCELYN.

“ 3<sup>rd</sup> June, 1728.

“ To the Hon<sup>ble</sup> Sir Philip Yorke,

“ &c., &c.”

At this time we find Sir Philip Yorke engaged as Attorney-General in several cases of general interest and importance, the particulars of which I will here state.

On the 9th of December, 1728, came on the case of William Hales,\* who was tried at the Old Bailey for forging a promissory note for £6,400, in the name of Thomas Gibson, Esq., and partners, and for publishing the same as a true one, knowing it to be false and counterfeit.

Sir Philip Yorke, as Attorney-General, appeared on the part of the Crown, and this trial affords a fair specimen of his mode of conducting cases of this nature.

On the jury being called, one of them was objected to by Mr. Serjeant Baynes, who appeared for the prisoner, on the ground that he was related to the prosecutor, Mr. Gibson :—

“ *Serjeant Whitaker*.—Prove it

\* State Trials.

" *Baron Carter*.—Pray how is Mr. Gibson concerned ?

" *Serjeant Darnell*.—It is a note of Mr. Gibson's.

" *Justice Page*.—I would recommend it to Mr. Attorney. I would have this trial without any colour of unfairness whatsoever ; and as Mr. Gibson is concerned, if he be really akin, I would advise Mr Attorney to waive him.

" *Attorney-General*.—My lord, I am sure it is our desire that this trial should proceed with all the fairness imaginable ; therefore, without entering into the question how far Mr. Gibson is concerned, or, if he is, what consequence that may have, I waive this gentleman."

The trial then commenced, and the Attorney-General proceeded to open the case, from whose speech the full particulars of this extraordinary transaction may be gathered.

" This, gentlemen, (he said) is the first case of the most extraordinary scene of forgery that hath come under examination in this place, committed in such a manner and attended with such circumstances, as make it necessary to be prosecuted with the greatest weight and solemnity, for an example and terror to others. All kinds of forgery are crimes of a most pernicious nature, as they tend to weaken and destroy that faith and commerce which ought to be maintained among men ; but forgery in the case of negotiable notes, which have a particular currency given to them by act of Parliament, whereby private credit is greatly assisted and trade carried on, is one of the most dangerous ; and if it should prevail, the consequences, though not easy to be foreseen, would certainly be extensive and destructive. Such is the nature of the offence whereof the prisoner stands accused, but howsoever heinous that may be, his guilt will depend entirely upon the evidence of the fact."

He then went on to show how the forgery was effected. Two franked covers for letters were obtained from Mr. Gibson, through his book-keeper, under pretence of wanting to send some news into the country, and the note was made on the cover, Mr. Gibson's signature to the frank being made to serve for that to the note, and some of his writing being erased. By a stratagem which Hales afterwards pursued, dressing up a young man so

as to pass him off for a particular person, he obtained cash for the notes in the city.

The prisoner was found guilty of this charge, as also of several others of a similar nature, effected in the same manner, which were afterwards brought against him. In two of these a clergyman of the name of Kinnersley was concerned, and tried and convicted with him. The sentence of the court was that Hales and Kinnersley should stand twice in the pillory, once in Fleet Street, at the end of Fetter Lane, and once at the Royal Exchange in Cornhill; that Hales should pay a fine of 50 marks, suffer five years' imprisonment, and give security for his good behaviour for seven years afterwards; and that Kinnersley should pay a fine of £200, suffer two years' imprisonment, and give security for his good behaviour for three years longer.

Mr. Hales begged that two years of his imprisonment might be remitted on account of his age, but it was not granted.

On the 11th of February following, Hales and Kinnersley stood in the pillory at the Royal Exchange, in Cornhill.

On the 15th of February, they both stood again in the pillory at Fetter Lane end, in Fleet Street. Kinnersley stood both times in his canonical habit (in which he appeared at his trials, to the indignation of Sir Philip Yorke), thinking to draw respect and compassion from the populace, but it had the contrary effect.

On February the 18th following died, in the press yard in Newgate, the above-named William Hales; and April 7th, 1729, died also in the same place of a fever, the before mentioned Kinnersley.

At the time when these frauds were committed by Hales and Kinnersley, it was usual for privileged per-

sons to frank letters by mere indorsement of their names. By stat. 4, G. III., c. 24, it is required that members of either house of parliament shall write the whole superscription.

Some years after these cases of Hales and Kinnersley, a curious attempt was made by one Fournier, a Romish priest and fugitive from France, to defraud Bishop Hoadley of £8,800, by means of a promissory note, forged on a frank.

In the course of the year 1728, a person named Woolston was tried and convicted in the Court of King's Bench, before the Lord Chief Justice Raymond, for a blasphemous publication, in which he maintained that the miracles of our Saviour were mere fictitious impositions. The Attorney-General conducted the prosecution, and is said to have displayed not only considerable eloquence, but great theological reasoning and learning, in refuting the arguments that had been propounded by the composer of the offensive work in question.

Woolston, on being brought up for judgment, addressed the Court, and in the course of his speech declared—

“If I survive this prosecution, I shall make bold to write a treatise concerning the nature of blasphemy; and was Mr. Attorney-General here, I would let him know I design myself the honour of dedicating it to him, wherein I hope to honour him as much as I have heretofore done the bishops.”\*

The trial of John Huggins, Esq., warden of the Fleet Prison, for the murder of Edward Arne,—the proceedings in which case were instituted in pursuance of a report of a committee of the House of Commons, appointed to inquire into the state of the gaols of this

\* Hardwicke MSS., Wimpole.

kingdom, so far as related to the cruel usage of the prisoners,—took place at the Sessions House, at the Old Bailey, on the 21st of May, 1729.

Sir Philip Yorke, as Attorney-General, conducted the case on the part of the Crown, and spoke as follows :—\*

“ My Lord, and you gentlemen of the jury, I am of counsel for the King, and this prosecution is the effect of a useful, compassionate inquiry concerning the gaols ; so it was found necessary to bring the cause before you, that gaolers may be punished, who have opportunity and have endeavoured to oppress the unfortunate persons under their charge and power. It is necessary that there should be gaols and prisons, and that persons should be under confinement ; but not for gaolers to have it in their power to commit oppressions and cruelties, to the loss of the lives of His Majesty’s subjects. If the evidence be true which shall be offered to you, this will appear to be an instance of the utmost oppression and the utmost cruelty. Mr. Huggins was warden of the Fleet Prison, and had the care and custody of the prisoners, and ought personally or by his deputy to take care of them, and so is answerable for them. Mr. Edward Arne came a prisoner in May, 1725, and continued there till he died. At his first coming in, he lodged with one Robert Shaw ; but some difference happening between them, he was turned out of that room, and lay in the common hall. This unhappy man was said to be disordered in his senses, which his oppression might reasonably occasion ; he was an inoffensive, quiet man : but about this time there was a new scheme of having a prison within a prison, which was

\* State Trials.

the occasion of their committing oppressions upon the prisoners. The strong room was then erected in the manner of a vault, commonly called a dungeon ; there was no window, no chimney ; it was built with bare brick and mortar ; upon what occasion it was built, the prisoner will give you an account, if he had any authority for building it. Gaolers are to take care of prisoners, but not to build dungeons to put them in. The walls were not dry, but very damp and unwholesome, as usually such places must be. While Arne was standing in the cellar inoffensively, Barnes, who was intrusted with the care of the prisoners, seized him and put him in this place, and he was there put without any manner of provision to sustain life. There was a little hole where you might put a little drink through ; sometimes he had an opportunity of having some, and sometimes none. Under this restraint this person was kept, without any convenience to ease nature ; the description is such that must move everybody to compassion. His bed was dragged in with him, and he ripped it open and crept into it to keep himself warm, and the feathers stuck to him by reason of his being besmeared with his own ordure, which he had not opportunity of doing out of the place. During the whole time whilst Arne was confined, Mr. Huggins, who was then warden, came twice, though he ought to have come oftener, and his duty required him so to do. Mr. Huggins looked upon him there, and saw him lie in that condition, in the place built by his own order ; but the prisoner, so far from giving him any relief, or removing him out of that confinement, ordered the door to be locked up in his presence, he being warden, and by his authority. This affecting condition the poor man was in, and in the circumstance he was in he ought to have relieved him.

Several applications were made to Gybbon, and other the servants of the warden, to desire this unhappy man to be released. Letters were sent to show his miserable condition, that he was not likely to live, and to desire that he might be put under a proper custody; but nothing was done. At that time even the prisoner saw him languish; his speech was lost; and then he languished and continued in the dungeon till the time of his death: this will appear clearly by the evidence, that he died in duress, and that the distemper there contracted was the occasion of his death. The next consideration is, Who and what was the occasion of his death? It is the duty of the gaoler to have a coroner's inquest to inquire into the death of a prisoner for his own justification, who, by having the custody of and the power over his prisoners, may destroy them; therefore, if there was no particular reason, why should it not have been done? Though he cannot pretend to show a particular order why he did not,—when I consider that nothing could be done but by his authority, nothing done but by his direction, that was his particular order.

“If he who was the principal gaoler, who had the authority to confine him, and to discharge him from an improper confinement, who saw him there, did not release him, but instead of that suffered him to be locked up, he is guilty of his death. In point of law, if a prisoner dies in duress of the gaoler by hard confinement, in a cruel manner, unnecessary to the gaoler's safe custody, it is death by law; if the gaoler is not answerable for the act, what needs the dead persons to be inquired after by a jury? Justice ought to be done, let it fall on whom it will; and I do not doubt but the jury, for the sake of their oaths, will find him guilty.”

Witnesses were then produced, who proved the facts of the case, as detailed in the Attorney-General's speech. Huggins conducted his own defence, and called several witnesses. The prisoner denied that he was ever seen in the Fleet while Arne was in the strong room, and said that he knew nothing of the man until he was examined about his death. He also disputed the accuracy of many of the witnesses, urged the difficulty of keeping the prisoners in safe custody, so many having escaped, and summoned several persons to speak to his character for humanity.

Mr. Justice Page summed up the case to the jury at very great length, who retired for about two hours and a half, when they came into court and returned a special verdict—"That there was sufficient evidence of Huggins being seen at the strong room; that he was warden of the Fleet at the time; Gybbon deputy, Barnes servant to Gybbon, and had the custody of Arne."

The verdict was removed at the prayer of the Attorney-General into the King's Bench.

Among Sir P. Yorke's papers, is a brief for the defendant in a case of *Christie v. Huggins*, which was an action brought against the warden of the Fleet prison, for allowing Sir Alexander Anstruther, Bart., who was in jail for a debt of £1,890 due to the plaintiff Christie, to make his escape.

Several other trials of a similar nature took place, prosecutions having been instituted in pursuance of the resolutions and recommendations contained in the before-mentioned report of the committee of the House of Commons. Bambridge, the warden of the Fleet, was indicted for the murder of Castell, a prisoner in his custody, and being acquitted on his trial, was afterwards arraigned,

together with Richard Corbett, on an appeal for the same offence. Acton, the deputy keeper and head turnkey of the Marshalsea prison in Southwark, was also tried on four charges of this kind; and Bambridge was again arraigned on a charge of felony in taking goods belonging to a prisoner in his custody. But it is singular that, in each of the prosecutions so instituted by the House of Commons, the prisoners were acquitted, either by the finding of the jury of not guilty, or the verdict specially delivered being determined to amount to this.

In the last of these cases, which was conducted on the part of the crown by Sir Philip Yorke, in his capacity of Attorney-General, there was a slight *fracas* between Bambridge the defendant and the Attorney-General, at the commencement of the proceedings. The latter appears to have been very susceptible of any suspicion of indulging in declamatory efforts on such an occasion, and to have possessed a rather mean opinion of the classical attainments of the ex-warden of the Fleet.

“ *Bambridge*.—My lord, Mr. Attorney-General, in his declamation that he has made, was pleased to admit that if there was a legal distress made, there could be no attempt upon my life.

“ *Attorney-General*.—My declamation!

“ *Bambridge*.—That Mr. Attorney, in his declamation, allowed, if it was a distress —

“ *Attorney-General*.—My declamation! I said that it would appear as a colour of distress to commit a fraud.

“ *Bambridge*.—You meant *in fraudem legis*.

“ *Attorney-General*.—I spoke in English, believing it to be more intelligible to you; you may make use of Latin words if you will.”

During the month of July in this year, a petition of Edward Farley, printer at Exeter, who was charged with high treason, for reprinting a traitorous libel in *Mist's Journal* of August 4th, 1728, and who prayed to be discharged from that prosecution, was laid before the

Attorney-General for his opinion upon it, together with some other papers relating thereto.

Sir Philip Yorke, in his letter to the Duke of Newcastle, containing his opinion on this matter, expresses himself unfavourable to a further prosecution of the case. His sentiments are at once wise, humane, and constitutional, and serve to display both the enlightened lawyer and the high-minded advocate;—an officer of the Crown who, in advising the ministry, would do justice also to the public.

The letter which follows was addressed by the Attorney-General to the Prime Minister, on behalf of a clergyman of eminent worth and talents; and who, in a great measure through the influence and aid of Sir P. Yorke, eventually rose to the highest offices in the church. Dr. Herring was at this time preacher to the Honourable Society of Lincoln's Inn.

*“Lincoln's Inn, Jan. 18, 1730.\**

“SIR,—As you have been so good as to honour my friend Dr. Herring with assurances of your favour, I cannot help acquainting you that the Dean of Norwich is supposed to be in a dying condition, and likely to hold out but a little while. If you should think this preferment proper, and he could succeed in it, the obligation would be very great; and as I know the relation it has to your county in which you have so just an influence, I dare answer for him that you would find nobody more attached to your interest and service. I am ever, with the greatest truth and respect,

“Sir,

“Your most obliged and most obedient faithful serv<sup>t</sup>,

“P. YORKE.

“Sir R. Walpole.”

\* Harmsworth MSS., Wimpole.

On the 7th of February, 1730, Mr. Pelham laid before the House of Commons a copy of the establishment of the Hessian forces for the year 1729, and then moved a resolution for a vote of money for their support. Sir Joseph Jekyll and Mr. Lutwyche opposed the vote, and argued that our navy was our natural support, and that we ought not to resort to foreign princes. They were replied to by Sir Philip Yorke and Mr. Talbot, and the subsidy was granted by a very large majority.

A grand debate occurred in the House of Commons on the 24th of February, on the bill to prohibit persons in Great Britain from lending money to foreign princes without the license of the King. In the bill was contained a clause that the Attorney-General be empowered, by English bill in the Court of Exchequer, to compel the effectual discovery on oath of any such loans, and that in default of an answer to any such bill, the court should decree a limited sum against the defendant refusing to answer. Sir Robert Walpole opened the debate, and moved that the bill be committed to a committee of the whole house.

Mr. D. Pulteney opposed the bill, and contended that, by denying the liberty of granting loans as they pleased to the people of England to foreign princes, we made Holland the market of Europe, and the mart of money to the nations of the continent.

Mr. Barnard also opposed the bill, and considered it a restraint upon commerce, which could not be justified, and which had ever been prejudicial. He would never consent to a bill which he thought a violation of our fundamental laws, a breach of our dearest liberties, and a very terrible hardship on mankind.

Sir Philip Yorke replied to the last speaker, and said "he thought that he and the Solicitor-General were very

well justified in drawing this bill, not only from reason and the fitness of things, but from the common law of the kingdom. That the King had a lawful prerogative to recal his subjects by proclamation from the service of foreign states, and should he not also have power to prohibit them from lending their money, which might be more useful and dangerous than even the service of their persons? That in Ireland the parliament had made it high treason to enlist men for foreign service without license obtained from the Crown; and surely a restraint upon money, the sinews of war, was highly expedient anywhere. That this law was intended only as a temporary restraint, a present remedy applied to an approaching evil, and not to be established in perpetuity. He observed that the clause for discovering evidence by English bill in the Court of Exchequer was the only method to make this law effectual; for such a transaction as lending of money in this manner would always be done in a very concealed, a very clandestine way. That if they did not pass this clause, they might justly throw out the whole bill, for there would be no evidence ever to support its design. That many such laws had provided such methods of discovery; that memorable law amongst others which punished the South Sea directors made it felony to refuse answering or to demur to a bill for discovery of concealments; and yet, if they discover a concealment, the very answer was good in evidence against them, and the concealment was felony; but here was a limited sum, and no other penalty could be the consequence attending conscious guilt upon such a bill of discovery. That by the construction of a court of equity, such a bill of discovery would have been allowed if this clause had not been inserted. That the barons of the Exchequer had maintained the legality of suitors to discover frauds and misdemeanours relating to the revenue,

nor could they deny that this was as just by parity of reasoning, though if the house should throw out this clause it might make the judges unwilling to supply it by such a construction, and therefore he hoped they would not throw it out.”\*

Sir William Wyndham spoke next after Sir Philip Yorke, and replied pointedly to his arguments.

The motion was carried without a division, and the bill eventually passed into a law.

In April 1730, the Lord Chief Baron of the Exchequer, Sir Thomas Pengelly, Knight, with several of his officers and servants, and Sir James Sheppard, Knight, Serjeant-at-Law, and also Mr. John Pigott, the High Sheriff of Somersetshire, all died at Blandford, in Dorsetshire, on the western circuit, during the Lent Assizes. Their death was supposed to be occasioned by the jail fever, which they caught during the trial of some prisoners at Taunton, who were brought from Ilchester jail. The infection spread widely in Taunton, and carried off some hundreds of persons.

A letter from the Mayor and Town Clerk of Dover was written to Sir Philip Yorke, as their Recorder, on the 30th of June, 1730; in which, after expressing their regret that the Attorney-General is unable to be present at their next sessions, they communicate to him the following information :—

“ We take this occasion to acquaint you that yesterday in Common Councill, this Corporation, as a testimony of their gratitude and respect, did elect you into the freedome hereof, which we humbly hope you will accept.”†

During November of this year, an order in Council was made for the Attorney-General to prepare a proclamation,

\* Debates of the Commons.

† Hardwicke MSS., Wimpole.

offering rewards for the detection of persons concerned in sending threatening letters. The order recites as follows:—

“Whereas severall accounts have been transmitted to His Majesty’s Secretaries of State, of letters being sent to diverse persons in the Citys of London and Westminster, and also in the Citys of Bristoll and Exeter, and other parts of the kingdom, requiring them to depositt certain sums of money in particular places mentioned in the said letters, and threatening to sett fire to their houses, and to burn and destroy them and their familys in case of refusal, some of which threats have been accordingly put in execution.”\*

At the commencement of the year 1731, Sir P. Yorke gave up his house in Red Lion Square, and took one in Arch Row, Lincoln’s Inn Fields, which he continued to occupy for some years. The Attorney-General’s two eldest sons, Philip and Charles, were about this time placed by their father at a school at Hackney, under the tuition of a Mr. Newcombe, and where each of their brothers received their early education. Two of the Latin letters which were written by Mr. Morland to Sir P. Yorke, when the latter was a youth, have been given in this memoir. Sir P. Yorke, from the advantages which he had derived from this mode of epistolizing, used to address his sons while they were at school in the same manner; and soon after the two eldest were sent there, we find a correspondence of this kind commenced between Philip and his father, which was kept up pretty regularly as long as the brothers remained at Hackney.

From the following passage in a letter to the Attorney-General from Mr. Meiler, of Erthig, about sending his own son to Cambridge, respecting which he had consulted

\* Hardwicke MSS., Wimpole.

Sir. P. Yorke, it would appear that the latter was in the habit of referring on these matters to that eminent divine and excellent man, Dr. Thomas Sherlock, Bishop of Salisbury, and Master of the Temple, of which Sir P. Yorke was at this time a Bencher. With this distinguished prelate Sir P. Yorke occasionally corresponded, as will hereafter be seen, and entertained the highest opinion of him.

“You do not mention y<sup>e</sup> person w<sup>th</sup> whom you chiefly consulted ; but if I am not much mistaken, I will mention my Lord Bishop of Sarum, for whose learning, piety, and good conduct, I have always had a particular regard and esteem.”\*

The following letter relates to an important political matter, which occupied a large share of public attention at this period,—the prosecution of a newspaper in the interest of the opposition. It is addressed by Sir P. Yorke to the Duke of Newcastle, and is transcribed from a rough draft in the former’s handwriting. This document affords a good sample of the Attorney-General’s style of official correspondence, and of his mode of advising upon, and dealing with an important and difficult subject of this kind.

“MY LORD,†—I had sooner returned an answer to your Grace’s commands relating to Fogg’s Weekly Journall, and the Craftsman of the 6th of this instant, if the nature of the former of those papers had not made me think it necessary to examine it very particularly.

“The view with which it was printed is sufficiently evident to private conviction, and therefore it wo<sup>d</sup> not only warrant, but call for severe prosecution, if there were legall grounds to hope for success. On the other hand,

\* Hardwicke MSS., Wimpole.

† Ibid.

to commence a prosecution in a case of this kind and fail in it, might be attended with consequences one would wish to avoid. I own when I first read it, I took General Monk's speech to be a mere invention of the author or his correspondent, notwithstanding the reference to Gwynes Lete's Life of Cromwell. But having with some difficulty procured the book, I found it to be a real translation of a speech which the author has put into the mouth of Monk, without departing from it in the most minute circumstances. Even those expressions which seem to squint at the state of affairs since the Revolution, and to be most liable to exception, are literally taken from thence.

"This greatly varies the state of the case; for when the author is avowedly writing concerning y<sup>e</sup> restoration of King Cha<sup>s</sup> y<sup>e</sup> 2<sup>nd</sup>, and has only copied a speech from a known history of those times which was published soon after, I apprehend it would be impossible to give such a paper a double meaning in order to make it criminal. If y<sup>e</sup> whole had been a fiction like Amos Dudge's letter in *Mist's Journal*, y<sup>e</sup> Court and y<sup>e</sup> Jury would have been at liberty to put a construction upon it; but when y<sup>e</sup> person accused can shew a public history of the times touching which he writes, from whence he only copied, in my apprehension that excludes all constructions, and must be a defence in point of law.

"As to the Craftsman, it is only a generall dissertation concerning y<sup>e</sup> honour and veracity which ought always to be preserved in communications from y<sup>e</sup> Throne, and tho' there is a certain sauciness in his manner of treating it, I don't [see] any particular stroke y<sup>t</sup> can render it criminal.

"I am, &c.,

"P. YORKE.

"To His Grace The Duke of Newcastle."

The trial of Richard Francklin for printing and publishing “a letter from the Hague,” (said to have been written by Lord Bolingbroke) in the *Country Journal or Craftsman*, of the 2nd of June, 1731, took place at the Sittings of the Court of King’s Bench, Westminster, on Friday, December 3rd, 1731, before the Lord Chief Justice Raymond.

The greatest anxiety appears to have been excited by this prosecution, and an account is given in Boyer’s *Political State of Europe*, of the interest which was created respecting it on the 12th of July, the day on which it was originally expected to come on. A vast number of spectators of all ranks and conditions, we are told, were gathered about the court to hear the trial, and the court was crowded with noblemen and gentlemen, among them, Lord Winchelsea, Lord Bathurst, Mr. Pulteney, Sir William Wyndham, Sir William Young, &c.; but when the jury were called, only eleven out of the twenty-four appeared, so after some discussion the case was put off until the next term. Mr. Pulteney, who was presumed to be one of the patrons of that weekly paper, was loudly cheered by the populace, as he went out of Westminster Hall.

Sir Philip Yorke appeared as Attorney-General to conduct the prosecution, and commenced by saying—

“This is a prosecution against the defendant, Mr. Francklin, for printing and publishing a scandalous and seditious libel; an offence (however it hath been treated of late days) which the law considers as a very heinous crime, as it tends to disturb the peace of the kingdom, and to bring into contempt the King’s administration of the government; and as it tends to create great jealousy and dissatisfaction in the minds of His Majesty’s subjects

against his government ; and indeed this is the use you find made of it. The present libel for and upon which the defendant is to be tried, will appear to be a libel of that nature, and attended with the most aggravating circumstances of any ever yet published."

The letter in question purported to be written by some one at the Hague ; and in it the writer said, " a rumour hath been for some time privately spread about, and begins to gain credit here, that a misunderstanding will soon discover itself between the allies of Seville," who were the Kings of England, France, and Spain. Again the writer went on to assert, " that certain ministers [meaning thereby the ministers of the King of England] having at length found out that too close an union with France, and a war upon the foot of the treaty of Seville, is quite against the grain of the people, are endeavouring to bring about an accommodation with the Emperor, and to undo every thing they have been doing for these five years.past," which would carry the calculation back to the 30th of September, 1725, when the treaty of Hanover was made. And then the writer afterwards stated, " If this should prove true, it will certainly redound very much to the honour of those gentlemen who have so vigorously opposed the late measures ; and the ministers who have not only concerted and pursued these measures, but loaded all opposition to them with the foulest imputations, will be obliged to take a great deal of shame to themselves." And then the writer asked the question, " For what can be a stronger condemnation of their own past conduct, than to see them wheel about all on a sudden, and pursue measures directly opposite ? And what can be more ridiculous than to see them desert one ally whose good faith, sincerity, and even cordiality

of friendship they have so often extolled?" This, the Attorney-General contended, was a plain charge of perfidy, or breaking of faith, against ministers, who were also charged as running into the arms of another ally, whom they had represented as perfidious and dangerous. They were moreover accused of bringing on the country great expense and hazard, and with a direct violation of faith. The Attorney-General then proceeded as follows :—

"Gentlemen, it is far from our desire that a forced construction should be made or drawn from this paper; but such a one only as every understanding person, that takes it up and reads it, would put upon it: but I would not be thought to mean that every reader understands it as a libel, or a scandalous libel as courts and juries do. No, the law is not so absurd to suppose such a thing. Besides, it is very well known there have been several cases of this nature that have been understood by the court and jury as such, I mean as a libel, before this time; and it is necessary to mention to you that a picture may be drawn very lively, and construed so, and that a libel may be written under feigned names, and yet plainly understood; as in the case of Mr. Mist's Journal in 1728, wherein the fictitious names of Esraff and Sophy, of Persia, were inserted; yet, notwithstanding these assumed names, when it came to be tried by a jury, they understood it, as every honest man would, to be a scandalous libel."\* He concluded by mentioning the proof that he should adduce of Francklin being the publisher of the libel in question.

The defendant was found guilty of publishing the libel; and the term following received sentence to pay a fine of £100, to be imprisoned for one year, and to

\* State Trials.

find security for his good behaviour for seven years, himself in £1000 penalty, and his two sureties in £500 each.

It was in reference to a subsequent prosecution against the Craftsman, which Sir P. Yorke conducted unsuccessfully, that Mr. Pulteney composed a ballad, with the following stanzas alluding to Sir Philip Yorke:—

“ For Sir Philip well knows,  
That his innuendoes  
Will serve him no longer,  
In verse or in prose ;

For twelve honest men have decided the cause,  
Who are judges alike of the facts and the laws.”

The letter which follows was the last which was written to Sir P. Yorke by his early friend and patron, the Earl of Macclesfield, whose death occurred a short time afterwards, and before the letter reached its destination. The intimacy between them we thus see remained unbroken to the last.

In this epistle it will be observed that Lord Macclesfield alludes to his fall, and also to his continued friendship for the Attorney-General; which it seems hardly likely that he would have done, much less have asked a favour of him in terms so pressing, had he considered that Sir P. Yorke had been guilty of the misconduct imputed to him, on the occasion of Lord Macclesfield's disgrace.

The letter is indorsed in Sir P. Yorke's handwriting, as follows:—“ Letter from the Earl of Macclesfield to me, on y<sup>e</sup> first report of my having y<sup>e</sup> Gr. Seal, in 1733, recommending Mr. Elphinstone; but not delivered till after his Lordship's death.”\*

S<sup>a</sup>,—Mr. Elphinstone informs me of a very agreeable piece of news, y<sup>t</sup> it is very confidently reported y<sup>t</sup> His

\* Har.wicke MSS., Wimpole.

Maj<sup>ty</sup> will very soon put y<sup>e</sup> Great Seal into yo<sup>r</sup> hands. It is what I thought I foresaw, and shall rejoyce at its being done. If it prove so, I desire to recommend Mr. Elphinston to yo<sup>r</sup> favour, and y<sup>t</sup> he may have some employm<sup>t</sup> or other under you. I took him at first into my service merely out of compassion, almost a stranger, and without any other recommendation. I found him a most sober, faithfull, dilig<sup>t</sup> serv<sup>t</sup> while I had y<sup>e</sup> Seal, and equally faithfull, diligent, and zealous, and thoroughly gratefull ever since, even in y<sup>e</sup> time of my being most insulted. Indeed, he has not continued in my service at all since I was out of place; I had not employm<sup>t</sup> for him y<sup>t</sup> I sho<sup>d</sup> keep him on my own acc<sup>t</sup>, nor could afford to keep him merely upon his. But I have severall times occasionally employed him, and he has behaved entirely to my satisfaction. If you can make room for him, you will give seasonable assistance to one y<sup>t</sup> deserves it, and furnish yo<sup>r</sup> self w<sup>th</sup> a servant who, I dare say, will gain yo<sup>r</sup> commendation and affection. My friendship to you and kindnesse to him are both of them inducements to my recommending him, and will, I hope, sufficiently excuse it.

“ I am, dear Sir,

“ Your most affectionate and most faithfull

“ Humble serv<sup>t</sup>.

“ MACCLESFIELD.”

On the 28th of April, 1732, died the Earl of Macclesfield, in the sixty-sixth year of his age, after about eight days' illness. This able and eminent lawyer commenced his career as a solicitor at Derby. He was afterwards called to the bar, and practised on the Midland circuit, where he was known, after he took the coif, by the *sobriquet* of the Silver-tongued Serjeant. He

was one of the managers on the trial of Dr. Sacheverell. At the time of his disgrace, when the popular clamour against him was, of course, very loud, the saying was current among the mob, that Staffordshire had produced the three greatest rogues of the day—Jack Sheppard, Jonathan Wild, and Lord Macclesfield!

On the 26th of June, 1732, there was an important debate in the House of Commons on the subject of a standing army. Sir William Strickland, Secretary at War, moved that the same number of land forces which had been maintained in the preceding year should be continued in pay. On the other hand, Lord Morpeth, having demonstrated the danger to which the liberties of the nation might be exposed by maintaining a numerous standing army in time of peace, made a motion that the number should be reduced to twelve thousand, which was supported by Mr. Williams Wynne, but opposed by Lord Hervey, Sir Robert Walpole, and others.

Sir William Wyndham said the maintenance of a standing army in time of peace was unconstitutional, and that we could never hope to see a time when Europe was in greater tranquillity than at present. There was even now more than enough to prevent invasions or insurrections. The disaffection in the country was a mere pretence. There was no real difference between a parliamentary and a standing army. Mr. H. Pelham replied to this speaker, after whom Mr. Barnard addressed the House, and denied that any disaffection existed in the nation. Sir Philip Yorke spoke next, and observed that “it was certainly the interest of this nation to render itself as considerable as possible amongst its neighbours; for the greater opinion they have of our strength and power, the less apt they will be to undertake any expeditions or invasions against us; and the

more easy it will be for us to obtain from them any advantages or immunities which we may think necessary for improving the trade and increasing the riches of the kingdom. There is nothing contributes more to the power and strength of a people than unanimity and concord among ourselves. For preserving, therefore, the tranquillity which by our influence has been established, it is necessary to continue the means by which we have been able to accomplish so good a design, for which reason he said he was for agreeing with what had been proposed.”\* Mr. Walter Plomer then addressed the House. Sir William Strickland’s motion was agreed to without any amendment, by 241 against 171.

A letter was written by the Duke of Somerset to Sir P. Yorke, on the occasion of a vacancy among the governors of the Charter House, to fill which office his Grace was very desirous that the Attorney-General should be elected. The writer of this epistle was Charles, sixth Duke of Somerset, commonly called the Proud Duke, both on account of his magnificent and stately mode of living, and the extreme haughtiness of his demeanour. He had been elected Chancellor of the University of Cambridge in 1688, and since his succession to the peerage had assisted at almost every grand solemnity which had occurred.

Another letter to the same effect was soon afterwards addressed by the Duke of Somerset to Sir P. Yorke. On the 10th of February, the Attorney-General apologized for not before replying to the Duke, on account of his numerous engagements during the last week of the term, and declined the proffered honour.

On the 5th of February, 1733, there was another debate on the land forces in the House of Commons, on

\* Debates of the Commons.

a motion by Mr. Williams Wynne for recommitting the resolution of the committee. Sir Philip Yorke assisted in the discussion, but no separate account of his, or of any other speech on this occasion, is recorded. The resolution of the committee, which was supported by Sir P. Yorke, was agreed to by 207 against 143.

On the 14th of March the grand debate on Sir Robert Walpole's excise scheme took place.

The House having resolved itself into a committee of the whole House, to deliberate upon the most proper methods for the better security and improvement of the duties and revenues charged upon tobacco and wines, all the papers relating to these duties were submitted to the perusal of the members; the commissioners of the customs and excise were ordered to attend the House, the avenues of which were thronged with people; and the members of the Opposition waited impatiently for a proposal in which they thought the liberties of their country so deeply interested. There had been a call of the House the day before. The attendance of members was very large, and both sides appeared ready and eager for the contest, when Sir Robert Walpole submitted his proposal. Mr. Perry, one of the members for the City of London, and Sir Paul Methuen, opposed the scheme, as did also Sir John Barnard, Mr. Pulteney, and Sir William Wyndham.

Sir Philip Yorke rose immediately after Sir Paul Methuen; and this is the last reported speech which the Attorney-General delivered in the House of Commons, and the fullest given of any. It is probably also the most efficient. Archdeacon Coxe says with respect to this debate that the Minister was principally supported in it by Sir Philip Yorke and Sir Joseph Jekyll.

The speech of Sir Philip Yorke on this occasion ap-

pears remarkable for its close reasoning, and the fair and candid spirit which pervades it. The Attorney-General here enters at large into the important constitutional topics of the liberty of the subject, the right of levying taxes, and the trial by jury; and most persons will agree in considering his sentiments on those points to be ably set forth, and patriotically expressed. One or two instances of well-directed covert satire will also be observed. The passages which follow are selected from it:—

“What can the affair now before us have to do with our constitution? There is nothing, there can be nothing, supposed to be in the proposition made by my honourable friend, that can in the least tend towards ineroaching on our constitution, or towards affecting the liberty of the subject. . . . Upon the present question, to talk of our constitution, seems really to me to be a sort of insinuation as if frauds in the collecting of the public revenue were become a part of our constitution, and that whoever attempts to remedy them must attempt something against our constitution. And as to the liberty of the subject, it is not possible for me to find out any liberty that can be struck at by the scheme now before us, but the liberty of smuggling; for as to national liberty,—as to that liberty which has always been, and I hope always will be, the glory of the people of these kingdoms,—it is certain that our public revenues are its greatest security. How, then, can that scheme be said to tend towards the destroying of liberty, which so evidently tends towards the improvement of that upon which our liberty manifestly depends? . . . I own that by the great charter, by one of the fundamental articles of our constitution, every Englishman is to be tried by his peers; but has

not the wisdom of the nation found it necessary to admit of many exceptions to this general rule? We have several of our most eminent courts which are, in every method of their proceedings, an exception to this rule: in the Court of Chancery we have no trials by juries; in the High Court of Admiralty we have no trials by juries; and in many particular cases it is ordered that the affair shall be tried in the most summary way without any jury. In all these cases the wisdom of the nation found it necessary to depart from the general rule established by the great charter, and therefore they altered the method of trial. Why should not the legislature now do the same? Is not their power the same? and if they see good reason for it in the present case, ought not they to do it? Whatever is done by the wisdom of Parliament becomes a part of our constitution; and whatever new method of trial is thereby introduced becomes from thenceforth as much a part of our constitution as ever the old one was. . . . I have as great a value for the liberty of my fellow subjects as any gentleman in this House; I shall always be ready to appear for the liberties of my country, whenever I see them in any manner attacked; but as liberty does not at all enter into the present question, it is needless to make any declarations about it, or to have it any wise under our consideration; and therefore I shall be very ready to give my assent to the motion made by the honourable gentleman near me.”\*

Sir P. Yorke's reference during this speech to his respect for the liberty of the subject, in which he is said to have alluded to his own conduct on certain state prosecutions, was, we are told, met with general cheering from all parts of the House.

\* Debates of the Commons.

Sir John Barnard, who, *according to Walpole* (*no mean authority on such a matter*), was one of the most powerful opponents in a debate with which the Ministry had to contend, and who undoubtedly, on the topic then under consideration, must have commanded attention, replied to Sir Philip Yorke, and commented on several of the points in his speech. Mr. Pulteney also alluded to some of the constitutional topics in it. On a division, the numbers were—for the motion, 266; against it, 205.

The discussion appears to have been conducted in rather a tumultuous manner; and the example of Members in this respect was promptly followed by the mob out of doors, who crowded round Westminster Hall, blocking up all the avenues to the House of Commons, and insulting those members who had voted with the Government. Sir Robert Walpole was seized by his cloak as he was getting into his carriage, but was rescued by his son and another gentleman. Finding public opinion so strong against his scheme, he thought proper to drop the measure, by moving that the second reading of the bill might be postponed until the 12th of June. Resolutions were, however, entered against these turbulent crowds, who ill-treated several of the members; and some persons were apprehended, in the Court of Requests, but were soon released. The miscarriage of the bill was celebrated with public rejoicings in London and Westminster, and Sir Robert was burnt in effigy. Whether Sir Philip shared the honour with him, history does not record.

In the debate which took place on the 10th of April, as to whether the City of London should be heard by counsel against the above bill, Sir P. Yorke spoke against the proposal, which was negatived. \*No report,

however, of what he said on this occasion has been preserved. The substance of the arguments on both sides is all that is given.

The following intelligence was contained in one of the journals of the 24th of March :—

“Last Sunday night at eleven o'clock, died of a fit of the stone, at his house in Red Lyon Square, The Right Honourable Robert Raymond, Lord Raymond, Lord Chief Justice of the King's Bench, and one of the Governors of the Charter House. . . . His Lordship is succeeded in honours and estate by his only son, now Lord Raymond, a minor.

“Tuesday morning his body was opened by Mr. Cheselden, the Queen's surgeon, in the presence of Dr. Mead, Physician to His Majesty.”

The correspondence which follows took place at this time between the Duke of Somerset and Sir Philip Yorke. The first letter was addressed by that influential nobleman to the Attorney-General.

“*Pettworth, March the 21st, 1733-32.\**

“S”,—Having this moment heard of the death of the Lord Chief Justice Raymond, I write this day to the Duke of Newcastle for his interest to procure you the Lord Raymond's seat in Westminster Hall, and alsoe his seat in the Charter House, both seats being your just due ; the one for your great abilities, and for y<sup>e</sup> long and faithful services done, by you, to the Crown, and to the subjects ; the other for your virtues, and known justice. I shall bee exceeding gi'd to have you to succeed in both places, for noe man is more sensible than I am, that it is your just due to bee now thus rewarded, being with the greatest truth,

“Your most obedient humble servant,

“SOMERSET.”

Sir Philip Yorke replied to His Grace as follows:—

“MAY IT PLEASE YOUR GRACE,\*—Tho’ I am just getting into my coach to goe out of town for a little air during our short recess, I cannot help stopping to return your Grace my humble thanks for y<sup>e</sup> honour of your most obliging letter, which is this moment come to my hands. I look upon this as a fresh instance of that patronage which your Grace has been pleased in y<sup>e</sup> most generous manner to afford me, without my being capable of rendering any service y<sup>t</sup> might merit such regard. The death of my Lord Raymond, with whom I always lived in a strict friendship, is what I sincerely lament, as well in respect of myself as y<sup>e</sup> public; and I am more sensible than any body else can possibly be, how utterly unable I am to supply y<sup>e</sup> loss of so great a man in any station. What is determined concerning it I know not, but sure I am y<sup>t</sup> your Grace’s recommendation will have great weight; tho’ I am doubtful how suitable y<sup>e</sup> office of Chief Justice of y<sup>e</sup> King’s Bench may be to my circumstances at this time of life, and with a numerous family of children. Whatever shall be y<sup>e</sup> event as to either of those seats your Grace mentions, I think it one of y<sup>e</sup> greatest honours of my life, y<sup>t</sup> y<sup>e</sup> Duke of Somerset has been pleased to name me for them.

“I am, &c.,

“P. YORKE.”

The Duke of Somerset wrote again to Sir P. Yorke on the 30th of March, and told him—

“I have a letter from the Duke of Newcastle, wherein hee doth assure me that it is entirely at your own choice to succeed the late Lord Raymond in Westminster Hall.”†

\* Hardwicke MSS., Wimpole.

† Ibid.

Various rumours as to the appointment of a successor to Lord Raymond were current at the time ; and it seems somewhat singular that, amidst the speculations which were afloat, Sir Philip Yorke should not have been at once pointed out as a likely person to fill the vacant office. One of the journals says :—

“We hear that the Lord Chief Baron Reynolds will be made Lord Chief Justice of the King’s Bench, in the room of Lord Raymond. That Mr. Justice Reeve will be made Lord Chief Baron ; and that Sergeant Chapple, or William Fortescue, Esq. (both members of Parliament,) will be made one of the judges of the Court of Common Pleas, in the room of Thos. Reeve, Esq.”

A rumour respecting a relative of Sir P. Yorke was at this time abroad.

“We hear that Sir Joseph Jekyll, Knight, Master of the Rolls, will soon be created a Baron of this realm.”

Some other intelligence respecting the same distinguished personage, of a less agreeable character, is mentioned.

“*June 7.*—Yesterday, in the evening, His Honour, the Master of the Rolls, crossing Lincoln’s Inn Fields, was rode over by a boy who was airing an horse there ; by which accident he was much bruised.”

Other accounts describe the learned and able judge as dangerously ill, in consequence of the accident, though he soon after recovered. The occurrence here mentioned led to the inclosure of Lincoln’s Inn Fields, and the construction of the gardens now in existence there.

Another of the journals thus describes a neighbouring legal district of the great Metropolis at this period, and which was for a short time the residence of Sir P. Yorke.

“Red Lion Square, in Holborn, having for some years lain in a ruinous condition, a proposal is on foot for applying to Parliament, for power to beautify it, as the inhabitants of Lincoln’s Inn Fields have

lately done, which from a heap of rubbish, and a receptacle of ruffians and vagabonds, is made one of the finest squares in the world."

The newspapers of this time are very full of the account of a horrid murder of three women which was committed in Tanfield Court, in the Temple ; and of the execution of the person, a woman, who was found guilty of the foul deed, on a gibbet erected for that purpose, at the end of Fetter Lane, opposite Mitre Court.

The same sources of intelligence also record that, about this time

"A fire broke out at Houghton Hall, the seat of Sir Robert Walpole, in Norfolk, which burnt one room, together with the furniture that was therein, but by timely assistance it was extinguished. It was occasioned by the carelessness of a servant."

A journal of July 2nd mentions that

"On Saturday the Right Hon. Sir Robert Walpole, accompany'd by several persons of distinction, set out for his seat at Houghton Hall, in Norfolk, for about three weeks, and during his stay there will keep open house."

On these occasions the utmost magnificence and even prodigality were exhibited, and numerous were the distinguished guests who crowded the hospitable mansion of their great political leader. It is to Walpole as he appeared at these times that Pope alluded in the following lines :—

"Seen him I have, but in his happier hour,  
Of social pleasure, ill exchang'd for pow'r ;  
Seen him, uncumber'd with the venal tribe,  
Smile without art, and win without a bribe."

The Weekly Journal of April 14th contains the following paragraph :—

"The Lord Chief Baron Reynolds is declared Lord Chief Justice of His Majesty's Court of King's Bench."

It also mentions that Serjeant Chapple is to be the new Lord Chief Baron.

Another journal of April 21st states—

“We hear that Sir Philip Yorke, Knight, His Majesty’s Attorney-General, will succeed the late Lord Raymond, as Lord Chief Justice of the Court of King’s Bench, and Mr. Talbot will succeed him as Attorney-General.”

One of the papers asserted that Sir Philip Yorke was soon to be created a peer.

The following paragraph also appeared :—

“We hear that the eldest son of Sir Philip Yorke, Knight, His Majesty’s Attorney-General, hath obtained a reversionary grant of a teller in the Exchequer.”

Soon after this, Sir Philip Yorke was appointed, by ballot, one of the Committee of the House of Commons, for inquiring into the frauds of the customs.

Mr. Justice Page, during this period, sat in the Court of King’s Bench as Lord Chief Justice, and Mr. Serjeant Darrell went the home circuit, in the place of Lord Raymond.

One of the journals of May 12th mentions the marriage of Sir P. Yorke’s friend, Mr. Justice William Lee, to the relict of Mr. Melmoth, brother of Counsellor Melmoth; “an agreeable young lady of £25,000 fortune.”

The acquaintance between Lord Bolingbroke and Sir Philip Yorke, and their social intercourse, have been adverted to before. On what occasion the following letter, very characteristic of that elegant writer’s style and manner, was written, does not appear, nor what were the professional sources alluded to which had been rendered by the lawyer to the philosopher, which the latter seems to regard with so much satisfaction.

*“ London, May the 23rd, 1733.\**

“ SIR,—Give me leave in a manner the least troublesome to you, to congratulate your recovery from y<sup>r</sup> late indisposition. I do it with all the gratitude of a client, and with all the affection, if you will permit me to use the terms, of a friend. No man can wish, or augur for you, better than I do. I wish you may, I am sure you will, go on to y<sup>e</sup> utmost extent of that career which you began so early in life, with y<sup>e</sup> applause of all partys, and y<sup>e</sup> ill-will of none. In the midst of that retreat and quiet, to which you have it more than any man in your power to send me, and which have been long y<sup>e</sup> innocent and y<sup>e</sup> sole objects of my ambition, whatever may have been said by those who wanted to excuse their open malice and secret jealousy, the best news I can hear will always be that of yo<sup>r</sup> health, prosperity, and fame, for I shall always be, with the highest esteem, the warmest gratitude, and the most sincere affection,

“ Sr,

“ Y<sup>r</sup> most obliged and most faithful humble serv<sup>t</sup>

“ H. ST. J. L. BOLINGBROKE.

“ Sir P. Yorke.”

The spring, summer, and autumn passed over; but still no Lord Chief Justice of the Court of King's Bench was appointed. The Lord Chancellor had several times been ill, but continued to act in different offices. One of the journals of the 6th of August contradicts a report of his resignation. Another states as follows:—

“ *August 25.* We hear that the Right Hon. the Lord Chancellor, who has been dangerously ill at his seat at Ockham, in the county of Surrey, is so well recovered that he takes the air every day, and in all probability will do.”

A journal of September 22nd stated that the Lord

\* Hardwicke MSS., Wimpole.

Chancellor would resign the next day, that Mr. Talbot would be his successor, and that Mr. Justice Reeve would succeed Lord Raymond. Of this, however, we shall hear more in the sequel.

Sir P. Yorke's name does not recur very frequently in Strange's Reports, as Solicitor or Attorney-General; but, in a large proportion of the cases there, the names of the counsel are not given. Strange himself seems to have had a large share of practice. In Michaelmas Term, 1 Geo. II., occurs the name of Parker, in the first case; who was another of Yorke's fellow students at Mr. Salkeld's, and who afterwards became Chief Baron of the Exchequer. In this term the Attorney-General's name appears as engaged in a case of considerable interest and importance, that of *Rex v. Curl*, 2 Strange, 777, the point decided being, that "an obscene book is punishable as a libel." An information had been exhibited against the defendant by the Attorney-General, for the publication of a work containing several obscene and lewd passages, of which he was found guilty; and in Trinity term it was contended, in arrest of judgment, that however the defendant might be punishable for this in the spiritual court, as an offence *contra bonos mores*, yet it could not be a libel for which he was punishable in the temporal court; and that whatever tended to corrupt the morals of the people ought to be punished in the spiritual court.

The Attorney-General, on the other side, said, "I do not observe it is pretended there is any other way of punishing the defendant, for if the spiritual court had done it, instances might be given; and it is no argument to say we meet with no prohibitions. Such a way of arguing would construe them into all sorts of jurisdiction.

"What I insist upon is, that this is an offence at com-

mon law, as it tends to corrupt the morals of the King's subjects, and is against the peace of the King. Peace includes good order and government, and that peace may be broken in many instances, without an actual force.

1. If it be an act against the constitution, or civil government; 2. If it be against religion; and 3. If against morality. Under the first head fall all the cases of seditious words or writings.

“ 2. It is a libel if it reflects upon religion, that great basis of civil government and society; and it may be both a spiritual and temporal offence.

“ 3. As to morality. Destroying that, is destroying the peace of the government, for government is no more than public order, which is morality. My Lord Chief Justice Hale used to say Christianity is part of the law, and why not morality too? I do not insist that every immoral act is indictable, such as telling a lie, or the like; but if it is destructive of morality in general, if it does, or may affect all the King's subjects, it is then an offence of a public nature. And upon this foundation there have been many prosecutions against the players for obscene plays, though they have had interest enough to get the proceedings stayed before judgment.”

Sir P. Yorke's dissertation here affords another illustration of his style, going back to first principles, and contending from natural reason, but supporting himself by reference to decided authorities. Thus, while his arguments seemed derived from pure reason, his conclusions he proved, in a surprising manner, to be founded on pure law. His mode of subdividing and analysing the argument will also be here remarked, and to which I before adverted. But, notwithstanding the force of the Attorney-General's reasonings, and the authorities with which he supported them, the justices of the King's

Bench seem to have felt great difficulty in determining the point, and the case was ordered to stand over for further argument. In the ensuing term, however, they gave it as their unanimous opinion that this was a temporal offence. "And," concludes Sir J. Strange, "the defendant was afterwards set in the pillory, as he well deserved."—An opinion in which the gentle reader will probably coincide with the learned reporter.

We have now to consider the character of Sir Philip Yorke in his capacity of the first law officer of the crown; both as regards his conduct in the exercise of his public duties, and the power and ability which he displayed on these occasions.

In a memoir of him contained in the Annual Register for 1764, which has been attributed to the pen of Mr. Burke, it is mentioned that in the execution of the important office of Attorney-General, "he was remarkable for his candour and lenity, as well as skill and other great qualities. As an advocate for the Crown he spoke with the veracity of a witness and a judge; and though his zeal for justice and the due course of law was strong, yet his tenderness to the subject, in the Court of Exchequer, was so distinguished, that it happened once, when he touched upon his own conduct in that point, in some of the parliamentary debates upon the Excise, in 1733, the whole House of Commons assented to it with an universal applause. He was so unmoved by fear or favour, in what he thought right and legal, that he often debated and voted against the court, in matters relating to the South Sea, whilst he was Solicitor-General; and it is well remembered that some years afterwards he brought a bill into parliament, and carried it through the House of Commons, as Attorney-General, relating to the management of the Derwentwater estate, which was

forfeited in the rebellion of 1715, contrary to the sense of some of the ministers, and of other eminent lawyers, merely because he thought the ordinary course of law not adequate to redress or prevent frauds and abuses in that case, without the interposition of parliament. Upon this occasion old Mr. Shippen said that he should ever honour him for his justice."

We have also the opinion entertained by Lord Chesterfield of the conduct of Sir P. Yorke while Attorney and Solicitor-General. This distinguished nobleman observed of him—"Though he had been Solicitor and Attorney-General, he was by no means what is called a prerogative lawyer, he loved the constitution and maintained the just prerogative of the Crown, but without stretching it to the oppression of the people. He was naturally humane, moderate, and decent; and when by his former employment he was obliged to prosecute state criminals, he discharged that duty in a very different manner from most of his predecessors, who were too justly called the bloodhounds of the Crown."

Lord Chesterfield's opinion here is fully borne out by reference to those state trials in the conduct of which Sir Philip Yorke was engaged, both as Solicitor and Attorney-General. In Mr. Layer's case the great moderation, humanity, and fairness, which he exhibited, were acknowledged even by the counsel opposed to him. And his opening speeches on the trials of Hales, Huggins, and Franklin, are characterized by the same spirit.

The favourable opinion of an adverse party on the character of a public man, must always be entitled to consideration. Above all, the commendation of a political opponent, who is most in danger of being prejudiced against the person about whom he writes,—especially when his own views, or party interests or feelings are in

any way involved in the matter,—is peculiarly deserving of weight. And when the individual who pronounces the opinion is one of Lord Chesterfield's perception, and judgment, and genius, every requisite seems to be supplied which could render it as satisfactory as possible.

Another high authority on this point, whose great eminence in Sir P. Yorke's own profession, in which he filled the same important offices as the subject of this memoir, render his opinion of real value ; and whose general candour and fairness entitle his remarks to the utmost attention on all occasions, thus speaks of the conduct of Sir P. Yorke while Attorney-General, as regards his prosecutions against the press :—

“ Considering how the law of libel has been laid down by Lord Holt, and other judges deemed constitutional, I believe that Sir Philip is to be deemed forbearing in instituting prosecutions against the press, and mild in conducting them.”\*

Sir Philip Yorke not only conducted himself with propriety in a situation which it was most difficult satisfactorily to fill, but he differed essentially from several of his predecessors in this respect ; and though there are few instances of a person holding the posts of Solicitor and Attorney-General at a period when so many state criminals had to be dealt with, yet he discharged the duties of those offices not only without incurring the odium which his predecessors had somewhat largely experienced, but was favourably distinguished in a marked manner from them. This, moreover, he accomplished without being either wanting in efficiency, or backward in the duties which his position entailed upon him.

\* Lord Campbell's *Lives of the Chancellors*. Lord Campbell also describes Sir P. Yorke's career as Attorney-General, as “ exhibiting a model of perfection to future law-officers of the Crown.”

As regards the manner in which Sir Philip Yorke fulfilled his private duties as an advocate, there is an anecdote, related on the authority of Mr. Bentham, which confers the highest credit both on the Attorney-General and his colleague, and which is as follows:— During the latter part of the time that Sir Philip Yorke was Attorney-General, Mr. Talbot was Solicitor-General, and Lord King was Lord Chancellor. This learned judge had been advanced to the above high office from being Chief Justice of the Court of Common Pleas, and had distinguished himself, not only as a very able common lawyer, but also as a very acute and powerful polemical writer. At the time, however, that he held the seals as Chancellor, he was so advanced in years that he often dozed over his causes when upon the bench,—a circumstance, says Mr. Bentham, which I myself well remember was the case. But this was no prejudice to the suitors, for Sir Philip Yorke and Mr. Talbot were both men of such good principles and strict integrity, and had always so good an understanding with one another, that although they were frequently and almost always concerned for opposite parties in the same cause; yet the merits of the cause were no sooner fully stated to the Court but they were sensible on which side the right lay; and, accordingly, the one or other of those two great men took occasion to state the matter briefly to his Lordship, and instruct the Registrar in what manner to minute the heads of the decree, so as that strict justice might be done.\*

Such a course as this, it must of necessity be allowed, reflected the highest credit on both the learned counsel who were thus concerned; and happy would it be for suitors in general, and most beneficial for the ends

\* Cooksey's Anecdotes.

of justice, even where the indisposition of the judge may not call for any extraordinary departure from the ordinary rules of judicature, could causes be always so terminated with reference to the real merits involved. Nevertheless, if the whole subject matter is comprehensively considered, it cannot be deemed any actual reflection on the members of the legal profession that law suits in general are not thus disposed of.

Indeed, in ordinary cases, such a line would be hardly consistent with, and is always doubtless quite beyond, the province of an advocate. His strict duty in this capacity is only to see that the full force of the argument which the facts on his side are capable of supplying, is presented to the Court. His moral duty as a man is not to take unfair advantage of his opponent, by misrepresenting, or causing to be misunderstood, those facts. Nevertheless, there is nothing of the judicial character belonging to him. The one office is wholly inconsistent with the other. It is as much out of place for the advocate to usurp any of the functions of the judge, as for the judge to take upon himself those of the advocate. Each is to further the administration of justice, but each in his own sphere. The precise duty of a counsel, even with regard to the concealment or revelation of a fact known to him as such, which, if disclosed, would contribute much towards disproving his case, does not appear, if closely inquired into, to be so entirely free from doubt as might at first be supposed. If all the facts of the case, except the one in question, were certainly known, and this stood independently by itself as an isolated fact, there is no doubt he would be strictly bound in honour, if not by professional duty, to disclose it. But as, on the other hand, it must almost always happen that only a small part of

the real state of the case is revealed, and as revealing this one fact alone—which is probably not independent of or unconnected with many others—would not serve to afford a more perfect, though perhaps a more extensive view of the whole case, the difficulty is not by any means solved.

Besides, circumstances on the other side may, most likely, be concealed, which, if communicated, might at least serve as a set-off to what he knows ; and thus, by disclosing his case, he might sacrifice unfairly, in order to satisfy his own feelings, or exalt his own character, the interests of another, which had been confided to his care, in reliance on his skill and honour, which would be surely exceeding, if not actually departing from, the strict line of duty.

Nevertheless, if the fact in question is of such a nature, so independent, so important, so essential, and so overwhelming, as at once indisputably to set at rest the point at issue in the case, it seems as though the advocate, in that instance were promoted to the judicial office by his extended knowledge,—wherein lies the main difference between the two ;—his *ex parte* duties are thereupon at an end, and he is bound to disclose all he knows, and to act according to the real circumstances elicited,—to insure the performance of that justice, to obtain which, in any case, is his highest, and in all of them his only legitimate aim and end.

But there is one particular case, which appears to stand by itself, and not to admit of being comprehended in the above :—that, where a prisoner whom a counsel is defending, in that strict confidence which the law allows to subsist between counsel and client, and which it is most important to preserve inviolate, confesses that he is guilty of the crime alleged, though he still refuses to

plead guilty to the court. Now, in this case it is evident, that if the counsel acts openly in a different manner, and to the prejudice of his client, in consequence of such a communication, he betrays the interest committed to him, and violates that confidence in reliance on which only the secret was revealed to him. But ought he still to exert himself in screening one whom he knows to be guilty? Unquestionably he is bound to do this, so far at least as to secure his client from being convicted unfairly, and by other than strict legal evidence; and this not, indeed, on account of justice in this particular instance, but for the purpose of insuring it in general cases of this kind, and to prevent a precedent for injustice being allowed, which might be most injurious in its consequences to the public safety, and tend to endanger the innocent. The advocate has, moreover, in each trial in which he is engaged a double duty to perform, and which it is important and imperative on him to fulfil. He has his private duty towards his client, and he has a public duty towards society at large. As regards the latter, it is equally his duty, as in the former case, to protect the public against a conviction of any member of their body on evidence which is insufficient, whatever may be his own feelings or knowledge as to this particular case. In this respect, he is constituted the guardian of the liberties of the subject, and his trust is alike sacred and important.

Sir Philip Yorke's speech on Mr. Layer's trial, was his grand effort as an advocate, considered both as an eloquent oration, and a masterpiece of legal reasoning. The report of it, however, contains only an outline, though probably some portions of his language are preserved tolerably perfect; the abridgment being principally effected by compressing the recapitulation of the

different parts of the evidence, on which he dwelt at great length. The speech, as we have it, is very remarkable for the close, logical mode in which he replies seriatim to each point of the argument urged on behalf of the accused, instead of rambling generally over the whole, or hitting at random here and there as he progressed, as is often done. We are told by those who witnessed the performance, that the speech occupied two hours in the delivery, and was yet full of matter ; —a questionable merit in our day, when the grand point often appears to be to deliver an oration of twice that length, without incumbering it with any matter at all !

In the speech before us, however, there is nothing of eloquence of the highest kind. No effort at imagination can be discovered in it : any attempt at wit would of course have been unsuitable here ; and though abundantly gifted with a satirical vein, as many of his other speeches evince, Sir P. Yorke had the good taste and feeling wholly to repress this on so solemn an occasion. There was, moreover, perhaps, not much room for either passion or pathos. As an effort of reasoning, conveyed in eloquent language, it must nevertheless always be acknowledged to be a masterpiece ; and many of the reflections and arguments are deeply philosophical, and evince a mind of a high order.

In the cross-examination of witnesses, Sir Philip Yorke seems to have been very sparing—as was also the case with Lord Eldon. In the exercise of this with skill and judgment, the power of the advocate in various ways is sometimes as fully displayed as in addressing the jury or the court. A knowledge of human nature is most essential here, and an acquaintance with the constitution of the feelings ; with the memory, and its particular capabilities, varieties, and peculiarities. The faculty of per-

ceiving the character of the person at once is also very useful in this department. By the above process, the evidence is thoroughly examined, the facts are, as it were, ground down, and each particle is closely scrutinized ; the story is well sifted, and its consistency tested to the full ; and by circuitous questions, the tendency of which is adroitly hidden from the witness, information is elicited from him, which he might be disposed to keep back, if appealed to in a direct manner. The converse of the story he is now made to tell, and further and important knowledge is obtained, which the prejudice of the witness, or the unfairness of the former examiner, had left concealed. The witness may also be made to weaken his own credit, by the account which he admits of himself, or of his character ; by the interest he discloses in the matter ; by the improbability which is now made to rest on his story ; or that he should possess the information that he professes to have.

From several letters addressed to Sir P. Yorke, while he was Attorney-General, by different distinguished individuals who were anxious to secure his professional services on their behalf on occasions of great consequence, it has been shown how high a character as an advocate he acquired. He was engaged in one very important cause, as counsel for the East Company, supposed to be that of *Admiral Matthews v. The East India Company* ; and so gratified were the Directors with the exertions made, and the abilities displayed on that trial by Sir Philip Yorke, that, in addition to the liberal fee which he received with his brief, they presented to him a magnificent and very costly service of China, of the most exquisite manufacture, beautifully embellished, and which is still in the possession of his descendant and present representative.

Some of the arguments of the Attorney-General contained in Strange's Reports are quite of a philosophical character ; and the reasoning, which is almost entirely from first principles, is often of the highest kind.

His parliamentary speeches while a Member of the House of Commons, and which are probably very imperfectly reported, are chiefly remarkable for their close reasoning, and the direct manner in which they grapple with the point at issue. Occasionally, some satirical power displays itself. There is, however, little or nothing of eloquence, or of philosophical argument ; or of that comprehensive mode of dealing with a subject for which his later parliamentary efforts are some of them so remarkable.

In Sir Philip Yorke's time, lawyers and judges were far less bound by precedent than they are in these days. Hence, on the one hand, greater inducements were held out to argue, and to decide cases, entirely from principle ; and, by a necessary consequence also, to study this more deeply, and to cultivate the mind more assiduously for dealing with pursuits of this nature. Longer time was also allowed, owing to the less intricate nature of our laws, for general study, and for turning attention to the higher authorities connected with this science, and referring to them on all occasions. Had Bacon and Hale lived in these days of multitudinous decisions and reports, and new acts of parliament, and rules of pleading, it is impossible that they could ever have found leisure to enter so much into the world of general literature ; to store their minds so fully with knowledge, and to give so many of their researches to the public.

Two kinds of forensic argument occupy the time and attention of practitioners at the bar : arguments on matters of fact ; and arguments on matters of law. The

former of these is that which is alone generally favourable to a display of eloquence, affording many opportunities for exhibiting the mental resources of the advocate, as well as regards the ingenuity of his reasoning, as also the style of his oration. Both the judgment and the feelings may here be appealed to. The subjects, too, which form the topic for discussion on these occasions are usually of a popular kind; and from the reasoning being addressed to a jury, who are unskilled in professional matters, the arguments are necessarily divested of mere legal technicalities, and turn on points of fact and general evidence. But in argument on matters of law little opportunity for eloquence is ordinarily afforded. This description of argument is, however, of two different kinds: 1. Argument from first principles; 2. Argument from decided cases and precedents. The first of these admits of considerable display of power and ingenuity, as regards the reasoning exercised. The other allows of but very little of this; mere legal knowledge, and acquaintance with technical points are the most that can be evinced here. The times in which Sir Philip Yorke lived were highly favourable for the exhibition of qualities which adapted persons for the former of these pursuits, both as regards argument on matters of fact, and on points of law of the first kind; while our own times are more peculiarly fitted for those of the latter. For the former, of course, an intellect of a far higher order is required than for the latter; and to his adaptation for, and superior skill in this high and difficult walk, it is that Sir Philip Yorke owed his great eminence as an advocate, and subsequently as a judge.

Rhetoric and reasoning are neither old, nor natural

allies. They not only do not assist, but they oftentimes thwart each other. And as law is essentially a reasoning process, and as being fettered by rule and bound down by logical subtleties is peculiarly inimical to the exhibition of eloquence on any subject, so far from expecting legal advocates to make great displays of eloquence in general, they are in reality the very last persons to whom we ought to look for this ;—and perhaps many may be disposed to think that they observe to the full this distinction. Few legal topics admit of eloquence, some of them as little as the elucidation of one of Euclid's problems ; and those to which rhetorical embellishment may be applied are not so much legal as general,—as contradistinguished in their nature and subject from the former. The rudest and the freest ages and assemblies are most favourable for the displays of eloquence. The House of Commons, perhaps on this account, is a favourite arena for its exhibition ; and is certainly far more adapted for this than the generality of cases which are tried in our law courts ; though, perhaps, some occasions in the latter afford the most advantageous opportunities for its display, in the grandest style, which can arise.

If a grand parliamentary debate resembles an action between two armies, an important law trial bears the same similarity to a combat between two great warriors. A forensic contest between advocates of high endowments, and consummate skill is, indeed, the noblest encounter of this nature which we have the opportunity of witnessing. It is superior as an exhibition of intellectual power to a debate, as, while the latter is a mixed contest between two opposing bodies of men, the former is one in which two minds are individually engaged in combating each other, and by which the resources and

powers, and dexterity of each are fully developed, and brought into play. The skill and tact of each of the antagonists, both in attack and defence—in hurling offensive weapons against the adversary, and in warding off the assaults of the latter—are most interesting to observe ; and the zeal and animation, which excite not only the giant combatants, but their partizans, are no less moving in the intellectual than in the physical contest.

Perhaps, indeed, it may be thought that in a senatorial debate a grander object is aimed at than in a trial, and that principles of a more lofty nature are involved ; and that, while the issue of the latter may affect only the fate of an individual, on that of the former may depend the welfare of a nation. In each, however, the leading principles argued from are of equal importance, and of equally general application ; though the precise point immediately at issue may be more confined in the one than in the other.

The only circumstance apparently favourable to the growth and display of forensic eloquence in our day, is the passing of the Prisoner's Counsel Act, which allows persons tried on all criminal accusations to be heard by counsel in their defence, and which was not previously permitted, as regarded addressing the jury ; but the services of the counsel were restricted to the cross-examination of the witnesses. In consequence of this enactment,—which some may regard as a measure of humanity as much to the bar as to the prisoner at the bar,—numerous opportunities are now afforded to the myriads of young advocates of exhibiting their oratorical skill, on occasions well adapted for its display, and demanding its highest energy. On the whole, however, I think it is very doubtful whether this measure has been

actually favourable to the cause of real eloquence. The speeches which are made on these occasions, respecting cases which are ordinarily of a comparatively very trivial nature, and without any previous preparation, and addressed to a common jury, are not likely to be adorned with high eloquence, especially as by this no advantage would be gained, though it might arise in the trial of cases in which the feelings or judgment of the whole assembly were deeply interested. Besides, like cases at *Nisi Prius*, great expedition is obliged to be used at these common trials, on account of the number of similar ones waiting to be despatched within a given space of time. On the whole, therefore, it seems to me that the Prisoner's Counsel Bill, by introducing the habit of making speeches on criminal cases, without any effort at eloquence, has led to the introduction of a common-place style of speaking on general occasions, which has been followed on others of higher importance; and that it has retarded, rather than advanced, the progress of forensic eloquence.

Particular periods are no doubt peculiarly favourable to the display of forensic eloquence, such as those wherein some great national movement is going forward, and when persons of high rank may become the subject of a trial; or great state interests, or the interests of leading parties in a nation, are involved in the issue of a proceeding of this kind. Such are times of political revolutions, or attempts at these, or seasons of popular commotion. These are the occasions which in our day have produced the grandest forensic exhibitions, as a reference to the splendid orations of Erskine, Curran, Mackintosh, and Brougham, and the events respecting which they were delivered, might alone at once serve to show. Not only high efforts in eloquence, but the finest displays of

reasoning power, are also brought forth by these occurrences. It is then only that the whole powers of a mind capable of such an effort are roused into action, and concentrated on an object worthy of engrossing it. The interests at stake are felt by all to be of vital importance. To the conduct and the result of the cause, are the actors in it then conscious that the breathless attention and anxious gaze of a whole nation are directed. The tribunal on such an occasion is also one of the highest nature and authority, and the presence of an audience of the foremost rank is ensured. Although great events assuredly cannot create men of genius, yet by these are their dormant powers roused to exertion; and eloquence, which might not unjustly be termed the artillery of the soul, is led to put forth its latent thunders. Men of extraordinary intellectual endowment are then urged on to the pursuit which offers the fittest opportunity for the display of the abilities of which they are conscious. Not unhappily for us, our own times have of late been peculiarly barren in transactions of this kind. On the other hand, fortunately for the fame of the subject of this memoir, and his able contemporaries, the period of our history during which he flourished was remarkably characterized by the recurrence of events of this description.

Some of the most celebrated forensic efforts—such as the oration for Milo—have, however, been made on occasions of comparatively small importance, while the grandest opportunities have at times passed by without calling forth any uncommon exhibition of this kind. But this can afford no proof against the general and natural tendency of these different events, in the way I have stated. It may nevertheless serve to show that, by the power of the orator, the occasion has been made

great, and not the greatness of the orator created by the event. And, perhaps, some of the most extraordinary displays of forensic skill have been evinced by raising up such grand and noble performances, which have been the admiration both of contemporary and succeeding ages, out of opportunities which appeared in themselves so unimportant and so trivial.

## CHAPTER IV.

1733—1737.

HIGH POSITION OF SIR PHILIP YORKE—TALBOT MADE LORD CHANCELLOR, AND YORKE CHIEF JUSTICE OF ENGLAND—CREATED LORD HARDWICKE—PROMOTION OF MR. SALKELD—NOTES OF CASES TRIED BEFORE LORD HARDWICKE—HIS SPEECH IN THE HOUSE OF LORDS ON THE AUGMENTATION OF THE FORCES—CIRCUIT CASES, 1734—MR. BARON COMYNS AND LORD HARDWICKE—PARLIAMENTARY PROCEEDINGS—LORD HARDWICKE A LORD JUSTICE—CIRCUIT CASES, 1735—DEBATES ON THE MORTMAIN, AND QUAKERS' TITHE BILLS—RIOT IN WESTMINSTER HALL, AND POPULAR TUMULTS—CIRCUIT CASES, 1736—LONDON CASES BEFORE LORD HARDWICKE—DEBATES ON THE LATE TUMULTS, AND SMUGGLING PREVENTION BILL—DEATH OF LORD CHANCELLOR TALBOT—LORD HARDWICKE'S JUDGMENTS AS LORD CHIEF JUSTICE—HIS CHARACTER AS A COMMON-LAW JUDGE.

SIR PHILIP YORKE must now be regarded as occupying a position of the highest eminence in his profession, having for more than nine years, and that during a period of considerable importance and excitement, filled the office of Attorney-General, by which he was placed at the head of the bar, and became the principal legal and constitutional adviser of the government. The very arduous duties of this station he discharged with the utmost credit to himself, both as regards the ability he displayed and the conduct he pursued; and also with signal benefit to the government with which he was connected. To his own mind the advantages of holding this important office for so long a period were very great, as by being the leading advocate at the bar, all his energies were called forth, and cases of the highest consequence, and of

a constitutional nature, occupied his attention. Many grand national questions besides came under his consideration, and his position was one of first-rate eminence, both as a professional advocate and a leading politician. He was at length, therefore, independent of the partiality or favour of any particular administration for obtaining high preferment, having reached that point in his career to which I have alluded as marking the progress of the professional aspirant,—when his services would not fail to be in requisition and to be sought for, not on account of any personal favour towards himself, but from the extensive advantage which the state would derive from them. In such a case, though a particular minister must be the immediate instrument of his elevation, yet he would be really indebted for this far more to the opinion of the public at large,—to the suffrages of the nation by whose voice his merits and fitness for these momentous duties would be unequivocally proclaimed,—than to any feeling on his behalf which the former might entertain ; and who, without very strong reasons for so doing, would hardly venture to disregard sentiments so expressed. Sir Philip Yorke, at the period of his promotion which I am about to describe, was peculiarly in the above position ; and the advancement which he obtained, it cannot be doubted, he owed much more to his own merits, and the opinion of the public respecting him, than to the private favour or partiality of Sir Robert Walpole.

Every one, however, of whatever eminence or powers, must be to a certain degree dependent on the chances of events, if not for promoting his rise, at least for opening opportunities to him for effecting this, and creating vacancies in those high offices to which he may be aspiring. The grand point to be gained by the individual is to attain

such a position as to be able and fully prepared, when the occasions do arrive, to avail himself of them.

Owing to the death of Lord Chief Justice Raymond, and the resignation of the Great Seal by Lord Chancellor King on the 29th of November, nearly at the same time both the two highest judicial offices in the kingdom were vacant. The general expectation appears to have been that, according to the usual forms of precedence, the Attorney-General would have been raised to the Chancellorship, and that the office of Chief Justice of England would have been conferred on the Solicitor-General. Sir Robert Walpole was, it is said,\* desirous that Talbot should be Chancellor, though Yorke was at first very unwilling to waive his claim of precedence here. What Walpole's reasons were for wishing that Mr. Talbot should have the Great Seal in preference to Sir P. Yorke, do not precisely appear. While the former had been in office not quite four years, the latter had been Solicitor and Attorney-General ever since March, 1720; and while the former had seldom taken any active part in the debates of the House of Commons—so that there does not appear any report of a speech of his in that House, with the exception of one which he made on seconding the proposal by Lord Stanhope, afterwards the famous Earl of Chesterfield, of Mr. Onslow as Speaker—Sir Philip Yorke had been an active and efficient debater for some years, and had spoken on most of the questions of leading importance. Yorke had besides been eminently distinguished, as we have already seen, in the conduct of some of the great state trials, so that his abilities in every way had been fully tested, and found adequate to every emergency. On the other hand, Talbot had devoted himself more exclusively than

\* Cooksey.

the Attorney-General to practice in the Chancery courts, while the latter had mainly confined himself to the common-law department ; and perhaps Walpole might also have been influenced in his preference of Talbot by his being much older, and of much longer standing at the bar than his colleague. Sir P. Yorke was at this time only in his forty-third year, which might be deemed too early an age for that of the first judge of the land, and counsellor of the Sovereign. It has, indeed, been several times stated\* that Walpole had some difficulty in persuading the Attorney-General to forego what he might not unfairly consider his just claim to the precedence ; for though the Chancellorship did not become vacant until some time after Lord Raymond's death, yet the infirmities and constant indisposition of Lord King caused this event to be long looked forward to as one which must speedily occur. Yorke, therefore, we are told, hesitated for some time before he would consent to be raised to the first common-law judicial office in the land : and hence the great delay in filling up the appointment which ensued between Lord Raymond's death and the selection of his successor. It appears, however, from a letter written by Sir P. Yorke to Mr. Baron Comyns, and quoted in a subsequent part of this chapter, that he had the absolute offer of the Great Seal at this period, and to which, in this letter, he refers as a thing well known in the legal world.

Both Yorke and Talbot are said to have been ambitious men, but the former of them is asserted to have been more avaricious than ambitious ;\* and Walpole, we are told, could only induce Yorke to resign his pretensions to the woolsack by augmenting the salary of the Chief Justice from two thousand to four thousand a year ; the

\* Cooksey ; *Law Magazine* ; Lord Campbell's *Lives of the Chancellors*.

salary then, and until very lately, forming only a small portion of the emoluments of the office.

This proposal came from the minister, and did not originate with Sir Philip Yorke, who only stipulated that the increase of salary should be continued to his successors, and not be made a personal distinction to himself. Nor was the offer of money the only one which was made to and accepted by him. A peerage was at once promised him, and shortly afterwards conferred. This circumstance at any rate affords the best possible proof of the great value set on his services, which is shown by the extraordinary price at which they were secured; two such inducements, both of them out of the ordinary course, being offered to obtain them, and that too by such a minister as Walpole.

The permanency of the situation of Chief Justice, and its freedom from political turmoil, may probably not have been without their influence on Sir P. Yorke's mind; and the position of the ministry, on the duration of which the tenure of the Chancellorship would depend, was then far from secure. In addition to this, as we have already seen, Yorke and Talbot had long been associated together on terms of the strictest friendship and intimacy, and would of course be desirous of accommodating each other; and as Talbot would not have been adapted for the Chief Justiceship of England, from his having devoted himself almost exclusively to practice in the Equity Courts, Yorke's persisting in his demand for the Chancellorship, must have been a virtual exclusion of his friend from high preferment for the present.

Matters being arranged, Sir Philip Yorke was on the 31st of October, 1753, appointed Chief Justice of England, in Lord Raymond's room; and Mr. Talbot on the 29th of November, the day on which Lord King

resigned the seals, was, at a general council then held, by His Majesty declared Lord High Chancellor of Great Britain, and shortly afterwards raised to the peerage by the title of Baron Talbot.

The journals of the day record the following particulars relative to Sir Philip Yorke's elevation to his new dignity:—

“*November 3.* Wednesday, Sir Philip Yorke, Knt., His Majesty's Attorney-General, was called to the degree of a serjeant-at-law, with the usual ceremony at the Court of Common Pleas; after which he gave a splendid entertainment to Sir Robert Walpole, the Right Hon. the Lord Chancellor, the Master of the Rolls, judges, serjeants-at-law, and several other persons of distinction, at Serjeant's Inn Hall. And on Tuesday he takes his place in the Court of King's Bench, as Lord Chief Justice of England; and we hear that a patent is preparing to pass the Great Seal to create him a peer of England, by the title of Baron of Carshalton, in the county of Surrey.”

The letter which follows was at this period addressed by Lord Chief Justice Yorke to the prime minister. It is worded in so cautious and lawyer-like a manner, that the subject alluded to in it is not at all disclosed to any other than the person to whom it is written. Most probably it related to the patent for the promised peerage, delay in which might at this juncture excite some apprehensions in the mind of Sir P. Yorke.

“*Sunday, Nov. 4th, 1733.\**”

“SIR,—I begg leave to trouble you with this, only to remind you of the affair, concerning which I last spoke to you at court. Not that I imagine you will forget it, but as I feel no little uneasiness in my mind whilst it is in suspense, I flatter myself you will have the goodness to forgive me if I am particularly desirous that it should be dispatched forthwith; the rather because I am appre-

\* Hardwicke MSS., Wimpole.

hensive that, when the Prince of Orange arrives, what will follow upon that will supersede all other considerations.

“As this is a point of soe much importance to me, I rely upon that friendship which I have soe often experienced, that when you consider all y<sup>e</sup> circumstances of this case, and how far I have gone already on my part, you will want no arguments to convince you that it is not fit that this matter should receive any delay.

“I am always, with the gréatest truth and respect,

“Sir,

“Your most obedient, and most faithful humble serv<sup>t</sup>,

“P. YORKE.”

“R. H. Sir Rob<sup>t</sup>. Walpole.”

This letter appears to have effected the object intended, as one of the journals has the following paragraph:—

“*November 17.* Thursday last, Sir Philip Yorke, Lord Chief Justice of the Court of King’s Bench, went to court to wait on their Majesties, on his being appointed a peer of Great Britain.”

The same authorities mention that the salary of the Chief Justice has been increased to £4000 a year.

On the 23rd of November, 1733, Sir Philip Yorke was accordingly raised to the peerage of Great Britain, by the title of Baron Hardwicke, of Hardwicke, in the county of Gloucester. This title was of course selected on account of his being the owner of the Hardwicke estate already mentioned. An additional reason for Sir P. Yorke being at once promoted to the peerage, beyond that alluded to above, has been assigned in the want of able speakers in the House of Lords on the ministerial side, at that particular period. As we have already seen, Sir P. Yorke acquitted himself with great skill in this respect in the House of Commons; though it is said

that an opinion was entertained that the style of his eloquence would be better fitted for the upper house; and which I should think, from his whole manner of dealing with questions, was decidedly correct.

The great eminence and distinguished success of Sir Philip Yorke at the bar, in each department of the profession, would lead the generality of persons to expect that, as a matter of course, a corresponding degree of fame would attend his career on the bench. In a vast variety of instances, however, anticipations of this kind, formed from a careful observation and perfect knowledge of the skill of the advocate, have been entirely disappointed: and it has not unfrequently happened that the most brilliant counsel have proved but very indifferent judges; while men who were their inferiors as advocates, when raised to the bench have shone forth beyond their contemporaries here, and greatly excelled those who far outstripped them at the bar. Nor is this at all to be wondered at, when we consider the vast difference in the duties which the two stations demand, requiring not only abilities and qualifications of quite another kind, but in many respects a totally distinct order and cast of mind. In each, indeed, great natural talents, extensive legal acquirements, a good store of general knowledge, and a sound discriminating judgment, will of course be essentially serviceable: but many of the most brilliant accomplishments of the counsel—the ingenious sophism, the ready reply, the well-pointed satire, the eloquent flow of language, and captivating address—will be quite lost and useless on the bench; while the sounder qualities of the mind—the habit of comprehensive examination and careful investigation of the whole bearing of a case, the dispassionate inquiry and penetrating judgment—which were not generally perceived

in the advocate, in the judge may shine forth in all their lustre.

But not only do the endowments of the successful barrister vary greatly from those of the eminent judge, but the practice of the former is by no means in all respects beneficial as a preparation for the duties of the latter. The partial opinion which he is accustomed to form at once of every case he is engaged in, the unsoundness of many points to which he is wont to resort, the deficiency in comprehensive ideas which he acquires, the aptness to imbibe in one particular direction a strong bias or prejudice, are great and serious impediments to making an able judge out of a leading advocate. Indeed, in some great advocates, the judicial qualities of the mind seem to have been almost entirely extirpated by this habit of taking always a one-sided view of the case, which appears to follow them to the bench, and characterises their manner of summing up each cause. In the case of Sir Philip Yorke, whose qualifications as an advocate mainly consisted in his sound knowledge of law, and whose comprehensive way of dealing with an argument resembled more the tone of the judge than the advocate, joined with a peculiar moderation of demeanour on all occasions, these disadvantageous influences did not operate so largely as in many others. Besides this, the offices of Solicitor and Attorney-General, in which he was engaged during by far the larger portion of his career at the bar, are to a certain extent of a judicial nature, involving not only the advocacy of the causes they have to plead, but the determination as to the merits of many matters on which they have officially to advise before they are brought to trial, and the giving their opinion on many different points submitted to them in cases where their decision is

almost tantamount to a judgment in one of our courts. In this latter capacity, Sir P. Yorke was very extensively employed, as is shown by the vast number of professional opinions by him on different points, now in the possession of his descendant, among his papers at Wimpole. Perhaps also the having so soon obtained a seat in the House of Commons, and accustomed himself to take a part in their debates, where more comprehensive reasoning is requisite than the mere advocate is wont to resort to, and matters of general interest are argued and dealt with, may not have been without its use. But probably the chief advantage which he possessed was, in being raised to the judicial bench at so comparatively early an age, before his mind had become warped, and had imbibed habits which after long usage could not without great difficulty be laid aside.

It is gratifying to record that one of the first acts of Lord Hardwicke, in the disposal of the patronage which fell to him as Lord Chief Justice of England, was to bestow on Mr. Salkeld the office of Clerk of Errors in the Court of King's Bench; an appointment both of honour and emolument, and the easy discharge of the duties of which would form an agreeable relaxation from the severer labours of the veteran solicitor.

Most satisfactory is it to be able to state that Lord Hardwicke took this opportunity of obliging a friend, to whom he had been at all events much indebted in his early life. And it is the more gratifying in this case, as it affords an additional refutation if that were needed, of the charge that has been brought against him of neglecting his old friends and early associates;—an accusation, which, from the numerous instances to the contrary adduced in this history, I need not, however, hesitate to pronounce as unfounded in fact, as the

attempt to fix it on Lord Hardwicke is dishonest and base.

On Lord Hardwicke's promotion to the bench, and during the period that he continued Chief Justice of England, he still resided in Lincoln's Inn Fields. He had also a handsome country residence, comprising a mansion and pleasure grounds at Carshalton, near Croydon, which he purchased while he was Attorney-General, and afterwards disposed of on his becoming the possessor of another estate.

The new Chief Justice took his seat on the bench, and commenced by hearing cases in banc, during Michaelmas term, 1733 ; after which he presided, during the Middlesex sitting subsequent to this term, at *Nisi Prius*.

Shortly after Lord Hardwicke became Chief Justice of England, and before he obtained his peerage, the Court of King's Bench was moved against Savage, the poet, on account of a poetical satire written by him, called "*The Progress of a Divine*," which was aimed at the Bishop of London and the clergy. "It was urged," says Johnson,\* "in defence of Savage, that obscenity was criminal when it was intended to promote the practice of vice ; but that Mr. Savage had only introduced obscene ideas, with the view of exposing them to detestation ; and of amending the age, by showing the deformity of wickedness. This plea was admitted ; and Sir Philip Yorke, who then presided in that Court, dismissed the information with encomiums upon the purity and excellence of Mr. Savage's writings."

The notes which were made by Lord Chief Justice Hardwicke of the different cases tried before him, have all been preserved, and are contained in five small volumes of note books. He appears to have seized

with great acuteness and discrimination on the leading points of the evidence given by the witnesses on each side, which he took down, omitting all matter not strictly relevant or important to the proceeding. The various points urged by the counsel are in some cases recorded, and on certain important occasions the arguments are arranged and numbered distinctly, as will be seen from the instances here cited.

The great attention bestowed on every case tried before him, has been remarked by some of those who have alluded to the judicial career of Lord Hardwicke. This is very fully borne out by a reference to the note books in question.

From these notes of trials I have in the present chapter extracted somewhat largely, considering them of the highest value, both for the elucidation of the character of Lord Hardwicke as a common-law judge, exhibiting his mode of arranging facts and proofs ; and also as genuine illustrations of the legal history of the time. In one instance, a note of his charge to the jury was also made, giving the substance of what he stated, and showing how he directed them to the consideration of the case.

These notes are also of deep interest to the general reader, as well as the legal student, as serving to illustrate in a very striking manner the state of the country at this period, in the lawless outrages which were every where perpetrated, and the general manners of the times. In the selection of the trials which follow, out of a vast number of others, I have been mainly guided by a desire to elucidate the above.

The before-mentioned books of notes commence “ Mich. 7<sup>o</sup> Geo. 2<sup>di</sup>, Regis. Midd<sup>x</sup> sittings.”

The first case recorded in them is not one of general interest, being only a common action for goods

sold and delivered. Serjeant Darnall was counsel for the plaintiff; and the Chief Justice's friend and former colleague at Mr. Salkeld's, Mr. Strange, was counsel for the defendant.

The second case is that of "*Wm. Shakspear ex dem. Mills, Johnson, &c. v. John Highman & al.*"

"Ejectment for theatre in Drury Lane.

"*Mr. Abney pro quer.* The estate of the Duke of Bedford—21st March, 1731, he demised to Tho. Kynaston and Francis Stanhope for 21 years, from Christmas, 1731.

"They assigned to the lessors of plaintiff."

Witnesses were called, who produced the several instruments necessary to prove the claimants' title, and a verdict was returned for the plaintiff.

The notes next record the principal points in an "action on the case for words," by "Mary King, spinster," against "James Lopdale." The words in question imputed to the fair plaintiff both gross lack of virtue, and the commission of very criminal acts to conceal her "misfortune."

"*Mr. Strange, pro quer.* Def<sup>t</sup> applied to pl<sup>tf</sup>. in y<sup>e</sup> way of courtship." The courtship appears, however, to have been somewhat abruptly broken off, and a suit of another kind commenced.

Witnesses were called to prove the words, after which it was contended by

"*Serj<sup>t</sup>. Darnall y<sup>t</sup>* strictness has not been followed in actions for words.

"They say that he had courted her, and was giving a reason why he could not have her. Nonsuit."

The trial which follows, though relating to a subject decidedly unattractive in itself, and the details of which are peculiarly uninviting, is of so curious a nature, and

affords such an insight into a matter which was long a subject of violent contention and litigation in the metropolis, that I have transcribed here the greater part of Lord Hardwicke's notes relating to it. For many years, the contest between the promoters of nuisances of the nature alluded to, and the public at large, who suffered from them, as here narrated, was hotly pursued, and various measures were devised to obtain a remedy. It was not, however, until very long after this trial, that the cause of cleanliness and salubrity obtained a final triumph, and the noxious and noisy animals in question were in due form of law condemned to be transported to such place, where they would be without risk of annoying the neighbourhood, as their owners might direct. Contemporary writers, albeit, agree, in their histories of the event in question, in demonstrating that the proprietors of the animals, during the too long period of their close contiguity to them, must have imbibed no small a portion of the obstinacy and turbulence of the foul objects of their attachment.

Some insight is also afforded, by the evidence given on this occasion, into the general condition, in many respects, of the metropolis at this period.

The able manner in which Lord Hardwicke took down the points of the evidence on this important trial is well deserving of attention. The cross-examinations, and the arguments of the counsel, are also given.

“Feb. 18. *The King agst Lewis Smart.*

“Indictment for a nuisance, in y<sup>e</sup> psh. of St. Giles's in the Fields, by keeping hogs, to the nuisance of y<sup>e</sup> people inhabiting near thereabouts. [Plea] Not guilty.

“*Mr. Abney, pro reg.* Nuisance at common law to keep hogs in or near a great city.

“ Scavengers Act makes hogs, kept within y<sup>e</sup> Bills of Mortality, forfeited.

“ This in y<sup>e</sup> road leading from St. Giles’s Pound to Hampstead.

“ Def<sup>t</sup> a distiller. Keeps hogs to take off his grains, &c.

“ *Robert Cooper*. Lives in St. Giles’s in Fields, Buckenridge Street. This hogstye is on y<sup>e</sup> road to Tottenham Court, ab<sup>t</sup> 40 or 50 yards from y<sup>e</sup> street road. Goes that way thrice or four times [a day]. Erected ab<sup>t</sup> a year and  $\frac{1}{2}$  agoe. Smells so strong y<sup>t</sup> there is no bearing it in summer time. Always offensive, whether y<sup>e</sup> weather is wett or dry.

“ + *Exam*. This hogsty is near y<sup>e</sup> cow-layer of Mr. Capper.

“ Never smelt any noisome smell before y<sup>e</sup> hogsty was erected.

“ This at least a quarter of mile fro’ y<sup>e</sup> place where y<sup>e</sup> nightmen make their pits.

“ Hasell’s horses on y<sup>e</sup> right hand of y<sup>e</sup> road ; y<sup>e</sup> hogsty on y<sup>e</sup> right side.

“ A dwelling house between y<sup>e</sup> hogsty and y<sup>e</sup> road.

“ Y<sup>e</sup> hogsty ab<sup>t</sup> 6 or 8 yards fro’ y<sup>e</sup> road ; y<sup>e</sup> garden between y<sup>e</sup> road and part of it.

“ A cow-layer to y<sup>e</sup> eastward, very long.

“ Another to y<sup>e</sup> northward. Cowhouses to y<sup>e</sup> south end.

“ The com. lay stalls on y<sup>e</sup> north side of y<sup>e</sup> north cow-layer.

“ The ditch was there before, and a drain to y<sup>e</sup> cow-layers.

“ *John Harold*. Lives near. Erected a year &  $\frac{1}{2}$ .

“ The hogstye is very offensive to passengers.

“ Before this hogstye crected, y<sup>e</sup> smell not offensive in any degree.

“ He was forced to change his house last summer ; his servants left him bec. they co<sup>d</sup> not bear it ; had another, w<sup>ch</sup> is broke up. This as near y<sup>e</sup> road as y<sup>t</sup> ; but y<sup>t</sup> was directly opposite to his door. Most offensive to him.

“ The street of contiguous houses runs on y<sup>e</sup> left hand, quite opposite to y<sup>e</sup> hogstye. On y<sup>e</sup> right hand ab<sup>t</sup> 29 yards from it.

*Mr. Hilton.* Goes frequently in sum<sup>—</sup>rtime betw. London and Hampstead.

“ Y<sup>e</sup> hogstye very offensive. Can smell it 100 yards.

“ Drives in thro’ y<sup>e</sup> walls of y<sup>e</sup> houses. Wo<sup>d</sup> not give now so much for them.

“ 3 or 400 or 500 hogs.

“ The cow-layers were not offensive before y<sup>e</sup> hogstye.

“ Smells y<sup>m</sup> in Great Russell Street, as far as Mr. Husk’s house. Has been made very sick by it.

“ Co<sup>d</sup> not sit in y<sup>e</sup> fore rooms.

“ *Hannah Hall.* Lives opposite. Very noisome smells arise.

“ If any body comes to see her, they are forc’d to hold their noses.

“ *Mr. Hucks.* Not much affected by y<sup>e</sup> hogstye, but by y<sup>e</sup> consequences. Y<sup>e</sup> sewer y<sup>t</sup> runs betw. his house & Serj<sup>t</sup> Baines’s affects his house to y<sup>t</sup> degree hardly ever free fro’ it. Wife sick Never smelt it in his parlour till since y<sup>e</sup> hogstye. Is affected to a very great degree now.

“ Smell very different fro’ what it was before. Has acq<sup>ted</sup> def<sup>t</sup> with it.

“ *Mrs. Marshall.* Lived at Mr. Huck’s 2 years. Chang’d y<sup>e</sup> colour of new wash’d linen. Tarnished plate. Servants sick with it. Will leave her place if not removed. W<sup>d</sup> not live there for £30 per annum.

“ *Mr. Marsh, pro def.* *Diff. betw. erecting hogstyes in y<sup>e</sup> middle of y<sup>e</sup> town, and hogstyes in the outskirts of y<sup>e</sup> town.*

“ The hogs take off a great many things in y<sup>e</sup> town y<sup>t</sup> w<sup>d</sup> otherwise be offensive. Public convenience.

“ *The town encreases to y<sup>t</sup> degree y<sup>t</sup> y<sup>e</sup> people build their houses up to y<sup>m</sup>.*

“ The indictm<sup>t</sup> preferred in last Trinity term.

“ Then there was another hogstye in being near this.

“ The lect jury were of opinion y<sup>t</sup> this was no nuisance.

“ *Mr. Strange.* This is some distance off of y<sup>e</sup> stones.

“ *This y<sup>t</sup> properest place for a hogstye, when so many lay-stalls and cow-lays admitted in y<sup>e</sup> outskirts of y<sup>e</sup> town.*

“ *The question is not w<sup>r</sup> one or two particular psons affected by it, but w<sup>r</sup> y<sup>e</sup> subjects in general.*

“ *Geo. Rudgate.* Has viewed twice or 3 times within a year.

“ This hogstye y<sup>e</sup> cleanest he ever saw.

“ A hogstye further y<sup>t</sup> way very offensive. Hogs y<sup>re</sup> fed with offal and blood.

“ There are offensive smells, but don’t know w<sup>r</sup> it proceeds fro’ y<sup>e</sup> stye or y<sup>e</sup> other nuisances.

“ Y<sup>re</sup> might be 20, or above, in Capper’s—100, or more, in Mr. Smart’s.

“ *Mr. Moor.* Lives at y<sup>e</sup> end of Diet Street, y<sup>t</sup> goes tow<sup>ds</sup> St. Giles’s. Goes often y<sup>t</sup> way. Has often met with very nauseous smells before this hogstye erected

and since. Was never made sick by it, tho' has a periodical asthma. Y<sup>e</sup> nastiest part of the town.

" *Wm. Wilton.* Past y<sup>t</sup> way frequently last sumr in July and August. Smelt very bad smells.

" Has known it 15 years. Very nasty place. Bad smells.

" *Mr. Pyne.* Lives ab<sup>t</sup> y<sup>e</sup> middle of Dyet Street. Passes by frequently. Did not know there was a hogstye there, till he saw it open.

" *P<sup>r</sup>. Cur.* No neighbours.

" Verd. p<sup>r</sup> Rege."

The next case, which is also very ably noted down, and contains fully the points in the declaration, the examinations in chief, and the cross-examinations, is mainly interesting on account of the nature of the defence set up, which proved availing on this occasion; and which was, that the marriage in question was not a legal one. It appears that the parties were united at a public-house in the neighbourhood of the Fleet, by one of those despicable persons who at that period were in the habit of officiating for this purpose. The mode in which the ceremony was performed is here fully described. Lord Hardwicke, some years subsequent to this time, when he had had full experience of the extent of the evils arising from the state of the law which allowed such marriages in some cases to be valid, introduced a measure on the subject, which at once put an end to such pernicious and disgraceful proceedings.

" Feb. 18, 1734.

" Thomas Clews, Pl<sup>t</sup>. ; Ew<sup>d</sup>. Bathurst, Def<sup>t</sup>.

" Special action upon y<sup>e</sup> case, for wickedly and maliciously procuring pl<sup>t</sup>'s wife, Marg<sup>t</sup>, to swear y<sup>e</sup> peace and exhibit articles agst<sup>t</sup> pl<sup>t</sup>, her husb<sup>d</sup>.

" Sets forth y<sup>e</sup> ar<sup>t</sup>.

“ That pl<sup>t</sup> was sent to Newgate on this inf<sup>n</sup>.

“ That y<sup>e</sup> time Marg<sup>t</sup> was his lawful wife def<sup>t</sup> enticed her from her husb<sup>d</sup>.

“ That def<sup>t</sup> enticed her to live with him in adultery, and she did soe for some time.

“ Plea—Not Guilty.

“ *Mr. Abney, pro quer.* July, 1731. Pl<sup>t</sup>'s wife Marg<sup>t</sup> lodged at Barnet.

“ Pl<sup>t</sup> took lodgings there.

“ 6th Aug<sup>t</sup>, 1731. She consented to marry him.

“ Had some fears lest it sho<sup>d</sup> come to y<sup>e</sup> squire's ears.

“ Married at y<sup>e</sup> 3 Tuns in Popping Alley.

“ She paid y<sup>e</sup> doctor his fees.

“ A little reluctant. . . . .

“ Def<sup>t</sup> prevailed on her to goe with him. Secreted her.

“ Paid her to exhibit false arts. Afterw<sup>ds</sup> to live with him in adultery.

\* \* \* \* \*

“ *Mr. Cuthbert.* 6th Aug<sup>t</sup>, 1731, lived in Fleet Court.

“ Was sent for to marry pl<sup>t</sup> Clewes to one Marg<sup>t</sup> Golding at an alchouse in Popping's Alley.

“ She s<sup>d</sup> she had no thought of it w<sup>n</sup> she came there. They whispered. Afterwards he read y<sup>e</sup> service to y<sup>m</sup>. She answ<sup>d</sup> yes to all y<sup>e</sup> quest<sup>ns</sup>. He had 6s. She paid part of it.

“ She gave him a k<sup>ss</sup>.

“ + *Exam.* Had no licence, but the Bh<sup>p</sup> of London's leave to pf<sup>m</sup> all parts of his duty.

“ Has been there 4 years.

“ Believes Mr. Clowes might have his hand in her pocket.

“ She had no friend in y<sup>e</sup> room.

“ He gave her as father.

“ She did not consent till after y<sup>e</sup> pl<sup>t</sup> and she had whispered.

“ Never declared to W<sup>m</sup> Collinson that he never saw a woman so unwilling, and y<sup>t</sup> he was fore’d to press her.

“ Or y<sup>t</sup> she a . . . . .

“ Did say she was very unwilling till they had whispered.

“ Above half an hour ab<sup>t</sup> y<sup>e</sup> service.

“ Pl<sup>t</sup> laid y<sup>e</sup> ring down upon y<sup>e</sup> book.

“ She did not throw away y<sup>e</sup> ring.

“ *Ellen Collins*. She was sent to Mr. Cuthbert.

“ The doctor demand 8s.

“ She was by—saw y<sup>m</sup> married.

“ The man put his hand in his pocket and had not money enough—she paid part.

“ The man kissed her, and she took it kindly.

“ The ring looked as well as a gold ring.

“ Did not hear y<sup>e</sup> woman show any unwillingness.

“ *Mrs. Wigan*. Knows pl<sup>t</sup> and Margaret Golding.

“ Remembers their coming back fro’ London to Barnet.

“ He was arrested as they came to London.

“ *Dr. Lee*, for def<sup>t</sup>.

“ Nonsuit.”

The newspapers of this period mention that the Norfolk circuit is that chosen by the new Lord Chief Justice as his first ; but we are afterwards told—

“ The Right Hon. the Lord Hardwicke, Lord Chief Justice of England, Mr. Justice Denton, and Mr. Baron Comyns, will not go their several circuits, but give their attendance for the service of the House of Peers.”

This information appears to have been correct, as the circuit notes made by his Lordship commence with the

proceedings of that which was held in July of this year.

Lord Hardwicke, when he came forward to speak on any question in the House of Lords, during the period that he presided as Chief Justice of England, seems to have preserved a very dignified and becoming deportment. From being a partisan, he assumed the high rank of an independent peer. The vivid declamatory style of his speeches in the House of Commons, which was not unbecoming the official advocate, was at once exchanged for the calm dispassionate tone of the first criminal judge of the kingdom, and contributed to earn for him the well-merited eulogy, that when he rose to address the House, it seemed like Wisdom herself speaking from her throne. If he stepped forth, it was not as a politician, to defend this or that measure of his patrons, but to pronounce with the authority of a judge, removed from the influence of party, the constitutional doctrine bearing on the case. Indeed, he was so far from being a partisan after he was raised to the bench, that, not only were the questions which he mainly espoused not those of leading importance to his political allies, but one of the principal occasions on which he so appeared was to oppose a measure which Sir Robert Walpole strenuously supported, and used every effort to carry.

Nor, in the House of Commons, was Sir Philip Yorke ever a servile adherent to his party, even though in office; and he several times voted contrary to the interest of the Government, at the risk of forfeiting both his place and prospects.

Whenever he spoke in the House of Lords, while Lord Chief Justice of England, he seemed to present himself reluctantly, and only when his opinion was called for by the nature of the question under consideration;—a

line of conduct which gave great dignity and weight to whatever he propounded on those occasions; and in which lofty and patriotic course he has never been more worthily followed, than by the noble and learned lord who at present fills that high judicial office, with so much honour to himself and advantage to his country.

The first speech of which we find any report or mention, that was delivered by Lord Hardwicke in the House of Lords, was one during the debate on the King's message for an augmentation of his forces, and which took place on the 29th of March, 1734. On the previous day, the Duke of Newcastle acquainted the House that he had a message from His Majesty signed by him, which he presented to the House, in which, after referring to the war then in progress, and his desire to avoid engaging in it, and in conjunction with his allies to procure an accommodation, His Majesty expressed a hope that he should be supported in it by that House.

This message the Lords resolved to take into consideration the next day, when—

The Duke of Newcastle moved an address, expressive of the grateful sense of the House for His Majesty's care of his dominions, and assuring His Majesty that the House would cheerfully support him in making such further augmentation of his forces, as should be necessary for the defence of his kingdom.

This was opposed by Lord Carteret and the Earl of Chesterfield, and supported by the Duke of Argyle; the principal ground of opposition being the want of information communicated to the House as to the nature of the treaties with foreign powers, and that this measure would be putting too absolute a power into the hands of

the Crown, and endanger the liberties of the nation; that the application was extraordinary and unwarranted, and deferred until the end of the session, and that the proceeding was uncalled for.

Lord Hardwicke rose immediately after Lord Chesterfield, who had already acquired a high reputation as a debater. The speech of the Chief Justice is principally remarkable for the direct manner in which he refers to the constitutional doctrine bearing on the point, and the pithy, concise, logical style, and temperate tone of his address, which, whilst it is the most brief of any in the debate, embraces the whole of the main points at issue, divests the question of all its subtleties and perplexities, and puts forth arguments of equal force with any of those made use of by the other speakers.

“*Lord Hardwicke.\**—My Lords, I think it is now admitted by both sides, that during the interval of Parliament, His Majesty has by law, and without any previous authority from Parliament, a power to provide for the safety of the kingdom, and consequently he must have a power of doing whatever shall appear to be necessary for that end; therefore I hope it will be no longer insisted on that there is anything very extraordinary either in the message now under our consideration, or in the proposition that has been made to us in consequence of it. His Majesty only asks for a previous authority for doing what he certainly might do without any such authority; and we by the address proposed to us, only promise to support His Majesty in what shall appear to be necessary for the safety of the nation, and for the support of his crown and dignity. If the nation should be unnecessarily put to expense, if any extraordinary mea-

\* Hansard's Parl. Hist.

asures should be pursued without a necessity for so doing, the ministers will be answerable for it, and may be punished in the same manner as if no such address had ever been proposed; and as there is no extraordinary power asked for, or proposed to be granted, the method of doing it cannot be of any weight in the debate, nor can it be attended with any ill consequence.

“As to the giving His Majesty a power by an address or a vote to raise land forces, there is certainly nothing illegal in it; for though the King cannot by law raise or keep up a standing army in this nation in time of peace without consent of Parliament; yet, my Lords, I know of no law that directs how that consent is to be obtained; it may, in my opinion, be had by a vote or an address from each House of Parliament, as well as by an act regularly passed in Parliament. And as to the Mutiny Bill which we have already passed, it is the same with former bills of the like nature, though there be a particular number of land forces mentioned in the preamble; yet the enacting part is general, and comprehends all the regular forces that then were on foot, or shall be raised in this kingdom during the continuance of that act.

“Therefore, my Lords, as there is nothing illegal or extraordinary in the message, or in the proposition now under our consideration; as from the present circumstances known of Europe, some accidents may happen that may put this nation under a necessity of making a farther provision for self-defence; and as those accidents may fall out so suddenly and so unexpectedly that there may not be a possibility for His Majesty to have time to take the advice and assistance of a new Parliament, I cannot but be for agreeing to the proposition now made to us.”

Lord Bathurst next spoke at great length, and com-

menced by replying to the observations of Lord Hardwicke, and stating that he “had a very great regard for the opinion of the noble lord who spoke last, especially in so far as related to the laws and the constitution of this kingdom; and therefore he was the more surprised to hear him declare that he knew of no law which determined and directed the method by which His Majesty was to have the consent of his Parliament: that he would not pretend to be so well acquainted with the laws or statutes of the realm as that learned lord; but he was sure that there was a law which determined the method by which His Majesty was to have the consent of his Parliament, as well with respect to the raising and keeping up a standing army in time of peace, as with respect to every other case where the consent of Parliament was necessary by our constitution.” He then instanced the *Lex et Consuetudo Parliamenti*, which he contended to be as much a part of the laws of England as any other part of the common or of the statute law; and reasoned at considerable length on the different constitutional and other points urged by the previous speaker in support of the motion.

The Lord Chancellor Talbot, Lord Ilay, Lord Winchelsea, and Lord Hervey, with some other peers, afterwards addressed the House, and the motion was carried by 101 against 58.

Some doubts have at different periods been expressed as to the authenticity of the reports of the parliamentary debates of this time. On the whole, however, I think it will appear that very fair and correct accounts have been obtained of what was really expressed on these occasions, and in some instances the exact language of the speakers has been preserved, either from memory by those who were present during the debate, or as supplied

from the notes or previously written draughts of the speeches by the orators themselves.

In certain cases indeed, apparently different reports of the same speech are extant. This, however, does not prove any of them to be actually spurious, or mere inventions of the reporters, as this variation will be found in several instances to be owing to different parts only of the same speech having been given in different reports, as each containing the whole. Occasionally, a mere outline of the substance is professed to be afforded, while in other cases this is done in part, and in part a report of the very words used by the speaker is preserved. Different auditors, moreover, retain the general outline of a speech in a very different manner, varying greatly according to the particular topics in it which most interest them, or their own peculiar prejudices and feelings on the subject. This may account for much apparent discrepancy in these different reports.

Thus considered, these several versions are quite reconcilable, and entirely consistent one with another. The main outline in each is correct, and still the same; the same characteristic spirit is visible in each; the mode of handling the subject is in each alike; the same profound argument, comprehensive views, and felicitous illustration, are evinced in every report of particular speeches. And these various reports agree not only with themselves, but they coincide in style and sentiment with the other parliamentary speeches, and with the legal discussions emanating on other occasions from the same enlightened mind.

The different orations of those great men who so fiercely combated one with another, which were delivered from the lips of the speakers with so much emphasis,

and amid so much excitement, and which drew along with them, in the whirl which their contentions created, the whole interest, and prejudice, and passion of the nation, now lie together, like the tombs of the orators themselves, silently side by side, and no longer produce any of those warm emotions they once so keenly called forth. We only, in this age, pause to admire the eloquence, the power, and the high feeling which animated, or were supposed to animate, such patriotic breasts.

Nothing perhaps serves so well to display the progress and state of feeling in a nation, and to exhibit the changes in the mind of a people, as the record of the debates which occurred in its senatorial assemblies. The most important part of the history of a country is thus best preserved, and the development of the popular opinion and dispositions here fully manifest. This is the truest mirror of the nation's mind.

In the selection of particular speeches, delivered in the House of Lords by the subject of this memoir, I have been guided chiefly by the desire to record such as involved points of leading constitutional interest, on which occasions Lord Hardwicke's authority was the greatest and most valuable.

On an apparently marked and essential difference between forensic and senatorial oratory of modern times, and which to a vital degree affects the manner and feeling of the speaker, I may perhaps be pardoned for noting here; which is, that while engaged in the former, the orator is conscious that the real issue of the event is mainly dependent on his efforts, and on his alone; the speaker in the other case, in most instances knows to a tolerable certainty the result of the debate before he opens his lips, and is persuaded that the minds of the

majority ere he addresses them, are made up to vote, not as he shall prove best, but as they are accustomed to act with their party; and the weight and responsibility of the argument is shared by many, instead of resting on one mind alone. If juries revealed before the commencement of a trial the decision which they meant to give, how much of the tragical excitement of the proceeding, both to the advocate and the audience, would be lost. The difference in interest between representation and real life, consists in nothing so much as in the fact of the termination of the transaction being unknown in the last case. These observations apply in some degree less to the debates in the Lords than they do to those in the Commons, as while in the first of these each acts independently, uncontrolled by others, in the other, the members are much influenced by the opinions of their constituents. But this difference exists only to a very limited degree, and it is as seldom perhaps in one house as in the other, that a question is determined entirely by the arguments of the speakers, and quite independently of the previous feelings and prejudices of the illustrious assembly.

The first circuit selected by Lord Chief Justice Hardwicke, after his elevation to the bench, was the Norfolk, on which he proceeded in July of this year. Buckingham was the first town on the circuit, and at this place his Lordship presided on the *Nisi Prius* side of the Court. The case which follows is a singular one, arising out of the superstition so common at that period, being an action for defamation brought by an old woman against a man for calling her a witch. The full particulars of the accusation made by him as set forth in the declaration are recorded by Lord Hardwicke; and the terrors

which haunted the mind of the doubly unfortunate defendant are here narrated at large :—

“ Norfolk Circuit, Summer, 1734.—Buckingham, July 23, 1734.

“ Mary Butcher, widow, plt.; Joseph Hadland, def<sup>t</sup>.

“ Case for words :—

“ She is a witch, and bewitched my wife, and I will prove it.

“ She is a witch. She came over y<sup>e</sup> pond, and over a hedge, her foot light.

“ She is a witch. I hung up a bladder full of water in y<sup>e</sup> chimney. Whilst y<sup>t</sup> remained there she had no power over my wife. She came down y<sup>e</sup> chimney in y<sup>e</sup> shape of a bird, and fetched y<sup>e</sup> bladder away.

“ There goes y<sup>e</sup> old witch. Damn her, I will have y<sup>e</sup> blood of her.

“ Plca—Not Guilty.

“ *Mr. Clarke, pro quer.*

“ *Robert Verney.* Knows y<sup>e</sup> parties. Ab<sup>t</sup> my house, heard def<sup>t</sup> tell a man y<sup>t</sup> Mary Butcher is a witch, and bewicht my wife.

“ Said she was a witch. She came over y<sup>e</sup> hedge, her foot light, and over y<sup>e</sup> pond.

“ Knows y<sup>e</sup> words were mentioned of Mary Butcher. She was named in y<sup>e</sup> conversation.

“ *Cross-exam.* Def<sup>t</sup> a cooper.

“ *Tho. Butcher.* There goes y<sup>e</sup> old witch y<sup>t</sup> bewitched my wife. Damn her, I will have y<sup>e</sup> blood of her.

“ *Ser<sup>j</sup> Urbyn, pro def.*

“ *Geo. Fellows.* Heard Rob<sup>t</sup> Verney swear at Hadland.

“ Verdict *pro quer.* da. 1<sup>r</sup>.”\*

\* So late as the year 1759, a case occurred at Wingrove, in Hertfordshire,

At Huntingdon, Lord Hardwicke sat on the Crown side, and presided at the trial of prisoners. The case which follows is that of a highwayman, a class of depredators with which at this period the country was overrun. A full description of the transaction will be found in his Lordship's notes of the trial:—

“Huntingdon, July 29.

“*Rex v. Marshall Topeland.*

“Indictment for robbing one Joseph Bull on the King's highway, and taking fro' his p'son a silk handkerchief, val. 3s., the goods of y<sup>e</sup> s<sup>d</sup> Joseph Bull, on 24th of Dec<sup>r</sup> last at Stukley. Not Guilty.

“Another indictment for robbing one Geo. Robinson on y<sup>e</sup> King's highway, and taking fro' his p'son certain goods of y<sup>e</sup> said Geo. Robinson, 24 Dec., at Stukley.

“Plea—Not Guilty. Not tried on this.

“*Joseph Bull.* Just before Xtnas day was going from this market, betw. 12 & 1 o'clock, in Stukley field. Saw 2 men in y<sup>e</sup> field. Overtook y<sup>m</sup>; took y<sup>m</sup> for neighbours. S<sup>d</sup>, Well overtaken. One of y<sup>m</sup> s<sup>d</sup>, Stand & deliver y<sup>r</sup> money, or you'll be dead. One of them shot at him, with small shot, on y<sup>e</sup> side of his face. Y<sup>e</sup> musket not half a foot fro' his face. W<sup>n</sup> he was down, asked for his money. They wanted him for his money. C<sup>d</sup> not find it. Y<sup>e</sup> man y<sup>t</sup> shot him took a silk handkerchief fro' him out of his pocket. They often swore they wo<sup>d</sup> shoot him. Trembled much. In March last y<sup>e</sup> prisoner was taken. He saw him in gaol. Asked him why he did not kill y<sup>e</sup> man y<sup>t</sup> he had shot in

of the old popular mode of trying a witch, by weighing her against the church Bible. An ancient dame was accused by a neighbour of possessing the useful female accomplishment of witchcraft, and of bewitching her neighbour's spinning-wheel, so that it would not go round either one way or the other. She submitted to the ordeal proposed, outweighed the Bible, and triumphed over her accuser.

Stuckly field, going fro' Huntingdon market. He said y<sup>t</sup> he said such words to him y<sup>t</sup> he c<sup>d</sup> not.

"He had searched his house at St. Ives after prisoner was taken ; there found his handkerchief. His wife had cut off a piece to make it square. Exactly agrees.

"*John Halfhead.* 2 men met y<sup>m</sup> & bad y<sup>m</sup> stand, & deliver their money, or they w<sup>d</sup> shoot y<sup>m</sup> dead. Immediately shot at y<sup>m</sup> ; he rid away after Mr. Robinson.

"*John Rose.* He searched y<sup>e</sup> house, and found y<sup>e</sup> handkerchief. He owned it immediately. Apprehended prisoner. He confessed y<sup>e</sup> shooting of Mr. Bull, hard by Stukly.

"Prisoner did not say y<sup>t</sup> he actually shot him—but s<sup>d</sup> he took y<sup>e</sup> handkerchief.

"Verdict—Guilty. Death."

During the Assizes at Cambridge, the judges were then, as is now the case, lodged and entertained at Trinity College, where Lord Chief Justice Hardwicke and his colleague on the bench were received on their arrival at this town. A present from the Earl of Oxford, the Lord Lieutenant of the County, of a buck, from Wimpole, which then belonged to that Earl, formed no inhospitable introduction for Lord Hardwicke to a domain with which, as we shall hereafter see, he became, ere long, very intimately acquainted. Lord Oxford, in company with the Duke of Portland, appears, by the following letter from the Lord Chief Justice to the former, to have honoured the noble judge with a call.

*"Trinity College, July 31, 1734.\**

"MY LORD,—I received at this place your lordship's present of a very good buck, tog<sup>r</sup> with your most obliging letter, both which I esteem as a very great honour, & as

\* Hardwicke MSS., Wimpole.

a particular mark of your Lordship's goodness & regard to me.

"I begg your Lordship to accept my humble thanks for so great a favour, & to be assured that I am extremely concerned that I was not at home when you & the Duke of Portland gave yourselves the trouble to call at my door. I must entreat your Lordship to thank his Grace in my name for the honour he does me, & make my best comp<sup>ts</sup> acceptable to him.

"I cannot conclude with<sup>t</sup> adding the sincerest assurances that I shall be proud of every opportunity of shewing that I am always, with the greatest respect,

"My Lord,

"Your Lordship's most obedient

"And most humble Servant,

"HARDWICKE."

At the Suffolk Assizes, Lord Chief Justice Hardwicke was again engaged on the Nisi Prius side.

And at the Norfolk Assizes also, the Lord Chief Justice sat at Nisi Prius. Politics appear to have run very high in this part of the country, which was that of Sir Robert Walpole. The two cases that follow, arose out of party animosities exhibited at the general election which had lately taken place, and with which the kingdom, in consequence of the strong political feeling which prevailed, had been agitated throughout.

"Norfolk, Aug<sup>t</sup> 7, 1734.

"Edward Millard, plt. ; John Wilmot, def<sup>t</sup>.

"Assault and battery, 24 May, 1734.

"Plea—Not Guilty.

"*Mr. Bedingfield, pro quer.*

"*Henry Jackson.* Was in company at y<sup>e</sup> Queen's Head, in Barcham ; def<sup>t</sup> landlord of y<sup>e</sup> house ; came in to

y<sup>e</sup> room, and charged plt. with putting up advice to y<sup>e</sup> freeholders.

“Plt. s<sup>d</sup> y<sup>t</sup> he had a right to pull it down. Def<sup>t</sup> assaulted plt.; held him by y<sup>e</sup> peruke; threw his hand in his face—made his nose and his forehead bleed. No p<sup>r</sup>vocation.

“*Mr. Metcalf* saw y<sup>e</sup> same. No provocation.

“*Serj<sup>t</sup>. Urbyn*, in mitigation of damages.

“Animosities at Elections.

“Verd<sup>t</sup>—*pro quer. da. 1<sup>r</sup>*”

In the notes of the following case we have a reference to an animated scene which occurred on the entry of the candidates into the town, and a description of the mode in which chastisement was inflicted by authority on a turbulent partizan.

“John Darby, plt. { W<sup>m</sup> Brown, Esq<sup>re</sup>,  
                                  { Sam<sup>l</sup> Artis, Esq<sup>re</sup>, &  
                                  { Peter Master, def<sup>ts</sup>

“Trespass for an assault, battery, whipping, and false imprisonm<sup>t</sup> of y<sup>e</sup> plt—28 day of Nov<sup>r</sup> last—for y<sup>e</sup> space of 6 days. Da. 20<sup>l</sup>.

“Plea—Not Guilty.

“*Mr. Proctor, pro quer.* Brown, Mayor of G<sup>t</sup> Yarmouth.

“Artis, an officer. Master, keeper of y<sup>e</sup> bridewell there.

“27 Nov<sup>r</sup> y<sup>e</sup> entry into Yarmouth.

“28 Nov<sup>r</sup> pli. whipped, & his head put in y<sup>e</sup> stocks.

“*Susan Darby.* Mr. Ward took up plt. He was put into bridewell 2 or 3 days after Mr. Walpole went out of town. On Wednesday, in y<sup>e</sup> afternoon—he was there 24 hours before she c<sup>d</sup> be admitted to him.

“Rowland, y<sup>e</sup> shoemaker, took him up.

“Def<sup>ts</sup> Brown & Artis, were in y<sup>e</sup> bridewell. They had her be gone.

“ She begg’d of y<sup>e</sup> Mayor not to whip him.

“ He lay upon a lock of straw—nothing but iron bars.

“ It was cold frosty weather.

“ *Cross-exam.* Was with plt. w<sup>n</sup> he was carried before Mr. Ward. He ordered him to bridewell.

W<sup>m</sup> Armiger. Saw plt. in y<sup>e</sup> House of Correction 30 Nov. last. Saw him whipt there.

“ Def<sup>ts</sup> Brown & Artis there.

“ Def<sup>t</sup> Artis took hold of him, & said “ in with him into y<sup>e</sup> stocks ”—Master put him in—his head & hands were put into y<sup>e</sup> stocks—afterwards he was whipt by def<sup>t</sup> Master. Saw large stripes. Did not observe Mr. Brown, the mayor, doe or say any thing.

“ Plt. was whipt severely.

“ *Cross-exam.* This y<sup>e</sup> usual manner of fastening p’sns to receive correction.

“ There were a great many gentlemen more in y<sup>e</sup> room.

“ *Tho. Southwell.* Mr. Martin gave him 3 lashes, & y<sup>e</sup> Mayor called out hold ; y<sup>n</sup> he gave 3 strokes one by 1.

“ There was no blood came.

“ Artis took hold of him to get him to y<sup>e</sup> stocks.

“ He was there 3 hours before plt. was whipt.

“ After he was whipt y<sup>e</sup> Mayor made him kneel down, upon his knees & ask pardon.

“ *James Teaser.* 30 Nov<sup>r</sup> last, was there. His mo<sup>r</sup> kneeled down to y<sup>e</sup> Mayor, and begged him not to whip her son, y<sup>e</sup> Mayor answered, *begone, we know you, you live in a townhouse. Besides, y<sup>r</sup> son has no friend to speak for him, & he shall be whipt for an example to others.*

“ Saw him whipt—after y<sup>e</sup> 2<sup>d</sup> or 3<sup>d</sup> lash y<sup>e</sup> blood followed y<sup>e</sup> whip. Mr. Artis said, whip him, a dog, whip

him. Y<sup>e</sup> Mayor & Justices sit there in a room called Justice Hall.

“*John Scott.* Saw plt. whipt by Mr. Master.

“Saw 2 lashes ; y<sup>e</sup> first pretty gentle ; y<sup>e</sup> 2<sup>nd</sup> very severe, as if it w<sup>d</sup> cut him asunder.

“Mr. Artis helped to put him into y<sup>e</sup> stocks—s<sup>d</sup> whip him. The Mayor, w<sup>n</sup> he tho<sup>t</sup> he had enough, bad him leave off. Plt. was kept in bridewell 3 days after.

“*Francis Clarke.* Saw plt. whipt. Y<sup>e</sup> bridewell man ordered him to assist. The Court gave orders y<sup>t</sup> he sho<sup>d</sup> be taken out & whipt—y<sup>e</sup> Mayor, and Mr. Artis, & some others were sitting in y<sup>e</sup> Court. He did not hear any of ye Court object ag<sup>st</sup> it. Did not see Mr. Artis doe any thing to plt.

“*Cross-exam.* Can’t say he heard any particular p’s’n give y<sup>e</sup> orders.

“*Robert Douglas.* Y<sup>e</sup> first blow a very little one. He thought y<sup>e</sup> second w<sup>d</sup> have cut him to pieces. Mr. Artis called out, whip him ; whip him.

“*Serj<sup>t</sup> Urbyn, pro def.* 1. This is a punt<sup>t</sup> inflicted by acts of parl<sup>t</sup>—idle disorderly p’s’ns—petty larceny.

“2. Nothing extraordinary in y<sup>e</sup> manner of doing it. 2 qu’ions. 1. W<sup>r</sup> def<sup>ts</sup> have done the fact. 2. Supp. they have, w<sup>r</sup> justifiable or not.

“This done in y<sup>e</sup> view of y<sup>e</sup> Mayor, and some of y<sup>e</sup> justices of peace, but no order of y<sup>e</sup> Court.

“He was committed by a p<sup>r</sup>per authority, for an offence. Riot on Mr. Coke & Mr. Mordant’s coming there ; L<sup>d</sup> Hobart there—plt. most active in it—threw a stone in to L<sup>d</sup> Hobart’s coach. Inf<sup>n</sup> made.

“Upon y<sup>t</sup> information Mr. Ward committed him, with directions y<sup>t</sup> h<sup>e</sup> should receive y<sup>e</sup> correction of y<sup>e</sup> House.

“Y<sup>e</sup> mayor and justices meet weekly to order correction.

“ This will excuse Mr. Master, y<sup>e</sup> Bridewell keeper.

“ *Mr. Lloyd.* Y<sup>e</sup> gaoler is not to qu’ion y<sup>e</sup> jurisd<sup>n</sup> of y<sup>e</sup> justices of y<sup>e</sup> peace.

“ Y<sup>e</sup> action sh<sup>d</sup> have been bro<sup>t</sup> ags<sup>t</sup> Mr. Ward.

“ *Sampson Mead.* Was present at y<sup>e</sup> proccession in Yarmouth. As they were going by Mr. Fuller’s door *he saw plt., John Darby, take up a stone and throw it at Lord Hobart’s coach ; broke y<sup>e</sup> side glass, and y<sup>e</sup> stone went into y<sup>e</sup> chariot.* Great tumult and throwing of dirt and stones.

“ Plt. sells fish. His mother lives within y<sup>e</sup> Pudding Walls, w<sup>ch</sup> are almshouses.

*Cross-exam.* Thinks he set his mark to y<sup>e</sup> inf<sup>n</sup> 2 or 3 days after y<sup>e</sup> riot ; believes it was done after Darby was sent to Bridewell.

“ Was before Mr. Ward w<sup>n</sup> he granted y<sup>e</sup> warr<sup>t</sup>.

“ *That was on y<sup>e</sup> day after y<sup>e</sup> riot ; did not make any inf<sup>n</sup> in writing before Mr. Ward before y<sup>e</sup> warr<sup>d</sup> granted.*

*Mr. Thornton.* Saw a great riot. 500 p<sup>p</sup>le there. Can’t say w<sup>r</sup> plt. did any thing.

“ *Mr. Proctor.* } Admits y<sup>e</sup> riot.  
“ (Repl.) }

“ *Mr. Pilsworth.* Plt. never heard before he was committed. Supp. he had been guilty of a riot ; he ought to have been convicted.

“ Verd. *pro quer.* da. £15.”

It was in reference to Lord Chief Justice Hardwicke’s conduct on this trial, that the celebrated Sarah, Duchess of Marlborough wrote thus to Lord Marchmont, warmly eulogizing the learned judge’s independence and impartiality :—

“ I had an account lately, which I will write, because I do not think it is printed, that my Lord Chief Justice Hardwicke has got great credit in his circuit to Norwich.

There was a Yarmouth man, in the interest of Sir Edmund Bacon, who, upon pretence of a riot at the entry of the courtiers, the Mayor ordered to be whipped. This man brought his action, & my Lord Hardwicke said it was very illegal & arbitrary, & directed the jury to find for him, which they did, & gave damages, tho' the foreman of the jury had married a daughter of Sir Charles Turner, who I take to be a near relation of Sir Robert's.\* I do not think this made the poor man amends, who was whipped wrongfully ; for I would have had those that occasioned the whipping doubly whipped themselves. But I suppose the judge could go no further ; and I liked it, because my Lord Hardwicke is a great man ; and I hope from this action, as well as from his independency, that he will have some regard to the proceedings in Scotland when represented."

During the vacation of the year 1734, Lord Hardwicke seems to have devoted some attention to literary occupations ; and a rough draft of a composition in his own handwriting, which is much in the style of the essay by him in the *Spectator*, signed "Philip Homebred," already alluded to, is among his papers. It is on the subject of mental culture and training, and contains, as might be expected, deeper thought than his juvenile effusion, and is of a more philosophic cast, serving well to mark the superior mind, ardent for the improvement of the powers it was conscious of possessing. The topic was one on which he was at that time peculiarly intent, as he was then framing plans for the education of his own children, whose subsequent attainments afforded the best proof of their father's good judgment here. Whether this essay ever appeared in print, I have not been able to ascertain.

\* Sir Robert Walpole.

Lord Hardwicke about this period applied to his friend Dr., afterwards Archbishop, Herring, and then Dean of Rochester, to recommend him a suitable person as a tutor for the Chief Justice's eldest son, Philip. Dr. Herring was instrumental in introducing Mr. Salter to Lord Hardwicke for this purpose. The selection of Mr. Salter appears to have been an admirable one, if we may judge of the capacity of the tutor from the proficiency displayed by the pupil. From the tenor of Dr. Herring's letter, it seems, however, that the Chief Justice made it a *sine qua non* that the proposed instructor should be not only a good scholar, but a good Whig.

Lord Bradford, who was connected by marriage with Lord Hardwicke, died in the course of the year 1734. Horace Walpole mentions that he devised an estate of near £12,000 a year to a Mrs. Smith for life, with remainder to Lord Hardwicke, in case this lady left no children. As the estate did not come to Lord Hardwicke, we may presume that the fecundity of Mrs. Smith exceeded the expectations of her friends. The Smith race is certainly numerous enough to lead to the supposition that unproductiveness is one of the least likely of all terrestrial calamities to befall that favoured family.

At the commencement of the year 1735, we find a letter to Lord Hardwicke from his brother-in-law, Mr. Billingsley, from which it appears that the Chief Justice had applied, though unsuccessfully, to the Archbishop of Canterbury to bestow some preferment on Mr. Billingsley, who had been originally the minister of a Dissenting congregation at Dover, but was subsequently ordained a clergyman of the Church of England.

Some correspondence took place at this time between Lord Hardwicke and Sir J. Comyns, one of the Barons

of the Court of Exchequer, which serves to exhibit in a striking manner the high opinion entertained of the Chief Justice, the confidence reposed in him by his brethren on the bench, and the extreme kindness and frank manner with which he treated the writer. The learned Baron commenced his address to Lord Hardwicke as follows:—

“MY LORD,\*—Since my L<sup>d</sup> Raymond’s death, I have no friend w<sup>th</sup> whom I can advise, unless I may presume to call your Lord<sup>sh</sup> such, as yo<sup>r</sup> natural goodness & great kindness & civility to me make me hope I may. I have long had y<sup>e</sup> wishes of many that I was Chief Baron. Since I came into Essex, I am told that a person who hath relation to y<sup>e</sup> Court being lately down here, said it was concluded y<sup>e</sup> L. Ch. Baron shou<sup>d</sup> succeed Ch. Just. Eyre; but who should be his successor was uncertain.”

He then proceeded to request Lord Hardwicke to use his interest with Sir Robert Walpole to obtain for him the desired promotion.

The application of this excellent and able judge was acceded to, through the instrumentality of Lord Hardwicke, though not until about three years after this time, when we find by the journals of the day that Mr. Baron Comyns was appointed Lord Chief Baron of the Exchequer in the room of Lord Chief Baron Reynolds, who retired.

Lord Chief Justice Hardwicke appears not to have gone the Spring Circuit of the year 1735, but probably remained in London, for the same reason which, during the preceding year, prevented him from leaving town.

Prior to the departure of the judges on the Oxford circuit, an order was made by the King in Council, for the Lord Chancellor to instruct them to discourage and

\* Hardwicke MSS., Wimpole.

deter persons from engaging in any riotous proceedings. The occasion of this order, as appears by the document itself, was "a riot committed at the town of Ledbury, in the county of Hereford, on the 20th and 23rd of September last, by great numbers of persons who came in disguise, armed with guns and other weapons, and cut down the turnpikes near the said town, and afterwards attackt the house of Mr. Skipp, &c."\* There had been also an attempt on the keeper of the county gaol.

On the 15th of April, 1735, there was a debate in the House of Lords on the bill for quartering soldiers at the time of elections, in which Lord Hardwicke took part. A very few words only are given in the report of the debate contained in Archbishop Secker's notes, of what fell from the Lord Chief Justice, who expressed his preference for leaving the conduct of the troops to the regulation of the common law, by which they would be liable to be tried before a jury, and to be fined more severely than by that bill. This, he said, would be better than to oblige or authorize them to come at the call of magistrates, who were always in some interest, for then there could be no consideration of the occasion.

A bill for the prevention of clandestine marriages was introduced into Parliament during this session; but though the evil had now become one of great magnitude, and absolutely demanding an effectual remedy, the measure miscarried in an early stage.

On Saturday, the 17th of May, the King set out from St. James's for Gravesend, in order to embark for Holland. Previous to his doing so, a council was held, at which Lords Justices were appointed for the government of the kingdom during His Majesty's absence, of whom Lord Hardwicke was nominated one.

\* Hardwicke MSS., Wimpole.

The Western circuit was selected by Lord Hardwicke as the one which he would go during the summer assizes of the year 1735. At Winchester he presided on the Nisi Prius side.

The following case, from Lord Hardwicke's note-book, is of interest, arising out of the perturbed and lawless condition in which the country then was. The different points in the evidence, and also in the argument for the defendant, are clearly taken down.

“ July 18. John Cosens, *qui tam*. Pl<sup>t</sup>.  
                   Inhab<sup>ts</sup> of y<sup>e</sup> Hundred of  
                   Mansbridge in Com. South<sup>ton</sup>, } Def<sup>ts</sup>.

“ Acc. On y<sup>e</sup> stat. 9 Geo. 1, called y<sup>e</sup> Black Act, for satisf<sup>n</sup> of a mess<sup>e</sup>, barn, and stable, feloniously burnt down by certain offenders unknown, and not taken in 6 months after y<sup>e</sup> offence committed.

“ Plea—Not Guilty.

“ *Serj<sup>t</sup> Chapple, pro quer.* A hole made in y<sup>e</sup> stable. Fresh straw, y<sup>e</sup> ends whereof were only burnt.

“ *Sarah Barley.* (Lives in a house in y<sup>e</sup> hundred by certifi<sup>d</sup> and pays taxes. Willing.) Ab<sup>t</sup> 3 weeks before X<sup>t</sup>mas, betw. 12 and 1 o'clock, she saw y<sup>e</sup> house afire. Did not see y<sup>e</sup> first of it. Y<sup>n</sup> 'twas burning near y<sup>e</sup> middle.

“ No fire in her house at y<sup>e</sup> time.

“ George Keene had y<sup>e</sup> care of y<sup>e</sup> house and barn.

“ Thinks y<sup>e</sup> fire began on y<sup>e</sup> inside. A thatched house.

“ Y<sup>e</sup> barn was on fire first.

“ *Mary Reeve.* (An inhab<sup>t</sup>, willing.) An uninhabited house by almost a quar<sup>r</sup> of a year. Her husb<sup>d</sup> had y<sup>e</sup> care of y<sup>e</sup> house, &c.

“ Saw some barley straw by y<sup>e</sup> corner of y<sup>e</sup> stable after y<sup>e</sup> fire. Never saw any straw there before.

“ She saw a hole w<sup>re</sup> a knot of y<sup>e</sup> boards was, and a

man might put in his hand. It burnt fro' y<sup>e</sup> stable to y<sup>e</sup> barn, and fro' y<sup>e</sup> barn to y<sup>e</sup> house.

“ It did not come fro' any neighbour's house.

“ *Can't make any judgm<sup>t</sup> how it co<sup>d</sup> come.*

“ *The hole was couled all round, and fro' thence it burnt up to y<sup>e</sup> manger.*

\* \* \* \* \*

“ *Mr. Olliver.* Within half an hour of one o'clock was riding along, and saw a p'son with a lanthorn and candle near y<sup>e</sup> house. He walked a little off as he rode by. Not very dark. Co<sup>d</sup> distinguish nothing but y<sup>e</sup> lanthorn and candle.

“ Related y<sup>e</sup> fact y<sup>e</sup> next day.

“ He was ab<sup>t</sup> 4 legg fro' y<sup>e</sup> house. The man was ab<sup>t</sup> half a legg fro' y<sup>e</sup> park. As he came riding by, y<sup>e</sup> man walked off fro' y<sup>e</sup> house.

“ *Mark Noble.* 4th Dec<sup>r</sup>, 1733, he gave notice to sev<sup>l</sup> inhb<sup>ts</sup> of y<sup>e</sup> hund<sup>d</sup>. 6th Dec. pl<sup>t</sup> and Geo. Keene were exam<sup>d</sup> bef<sup>r</sup> Col<sup>l</sup> Fleming.

“ *Mr. Fortescue, pro def.* The house must be set on fire feloniously.

“ 1. There might be barley straw in y<sup>e</sup> barn.

“ 2. The straw w<sup>ch</sup> was so far lighted as to burn y<sup>e</sup> stable, must have been consumed itself.

“ As to y<sup>e</sup> p'son seen with y<sup>e</sup> candle and lanthorn ; no suffic<sup>t</sup> evid. to convict him ; y<sup>n</sup> no felony.

[*If he did it by accident no ground.*]

“ 4. The barn on fire a good while before y<sup>e</sup> stable.

“ Ver<sup>d</sup>t, *pro quer.*, dam. £30.”

During the Assizes for 1734, the legal profession began to reap the benefit of the litigation caused by the broils which the contested elections, consequent on the dissolution of Parliament in that year, had engendered. One assize was, however, totally insufficient to dispose of the

numerous cases, of almost every variety, of which this great event was so abundantly productive.

The trial which follows is that of an action for words spoken of a person respecting his conduct at an election.

“*Tho. Cornelius, pl<sup>t</sup>          John Ballard, def<sup>t</sup>.*

“Case for words charging pl<sup>t</sup> with being forsworn by being polled twice in y<sup>e</sup> election. .

“Plea—Not Guilty. .

“*Serj<sup>t</sup> Chapple, pro quer.*

“*Mr. Rob<sup>t</sup>. Clarke.* Writ and return.

“*Mr. Tarrant.* Was undersheriff. Candidates. 16 waggons for taking y<sup>e</sup> poll.

“*Tho. Pitt.* 11 May, 1734, heard John Ballard speak these words. 4 set of words. Several by.

“Ballard a smith. Pl<sup>t</sup> a gentl. It has been talked of.

“*Mr. Heysham.* Took y<sup>e</sup> poll at one booth. Pl<sup>t</sup> polled for Lord Harry Powlett and Mr. Clarke.

“*Serj<sup>t</sup> Belfield, pro def.*

“Verd. *pro. quer.* da. 40<sup>r</sup>.”

Lord Chief Justice Hardwicke, in his charge to the grand jury of the county of Cornwall, adverted to an extraordinary outrage which had been perpetrated in that county, and had been the occasion of no less than three murders, by a person of violent disposition and lawless habits, who endeavoured to retain by main force, and with the assistance of others of congenial pursuits and feelings, a house and estate which the law had adjudged to be the property of another. The particulars of the case, which appears to have been the leading one at these assizes, will be found in the notes of it by Lord Hardwicke, taken at the trial of the offender, at which he presided. Of the charge, the following fragment only remains, the force and eloquence, and elegant structure of the sentences of which make us the more to regret the

loss of the other part of it. What is left serves, however, as an excellent sample of his lordship's oratorical style, and in this respect closely resembles some of his reported speeches. After referring to the enormity in question, and expatiating on the danger of allowing persons to take the law into their own hands, and the necessity of suppressing such daring outrages, the Chief Justice proceeds:—

“Of the truth of this observation, and of the pernicious consequences of lawless force, you of this countrey have lately had a flagrant, but an instructive, instance. In that you have seen from what small springs a torrent of violence may arise. How people once engaged in such practices, goe on from invading the property to taking away the lives of their fellow-subjects; and from an obstinate contemptuous opposition to the regular decisions of y<sup>e</sup> ordinary courts of justice, they advance almost to open rebellion.

“The honourable and indefatigable endeavours of the gentlemen of this county, to reform and suppress such daring outrages, cannot be sufficiently commended, and must always be remembered highly to their honour. And happy it is that those endeavours, enforced by the seasonable and gracious assistance of His Majesty, had the desired effect. To consider this affair in its full extent, it ought on the one hand to be looked upon as a strong proof that the King will make use of the *extraordinary*, as well as y<sup>e</sup> *ordinary* powers of his government, *only* for y<sup>e</sup> protection and security of his people; and on the other hand, that the gentlemen of England will unite in y<sup>e</sup> support of the laws, and of legal well-established government, against all attempts of any kind whatsoever to introduce disorder and confusion.”\*

The trial which follows is that of the offender concerned

\* Hardwicke MSS., Wimpole.

in the crime alluded to, and also of one who was connected with him on this fatal occasion.

*“Crown Side.*

*“Launceston, Aug. 1, 1735.*

*“The King ag<sup>st</sup> Henry Rogers, & John Street.*

*“Indictm<sup>t</sup> for y<sup>e</sup> murder of W<sup>m</sup>. Carpenter, by shooting him in y<sup>e</sup> back with a gun charged with leaden bullets, 19 June, 1734, at Crowan in Com. Cornwall.*

*“Plea—Not Guilty.*

*“Serjt. Chapple, pro rege.*

*1. Stephen Fillie. Was Undersherr. 1734. 8 June, 1734, rec<sup>d</sup> a writ of assistance under y<sup>e</sup> Great Seal.*

*“31 May, 1 Geo. 2<sup>nd</sup>. Writ of assistance. Y<sup>e</sup> writ of execution of y<sup>e</sup> decree, & writ of poss<sup>ion</sup> of y<sup>e</sup> estate, wh<sup>r</sup>of poss<sup>ion</sup> was to be deliv<sup>d</sup> to Ann Rogers, commanding to put Anne Rogers into poss<sup>ion</sup>, & to remove y<sup>e</sup> s<sup>d</sup> Henry Rogers, his tenants and accomplices, fro<sup>y</sup> y<sup>e</sup> poss<sup>ion</sup> of y<sup>e</sup> prem<sup>s</sup>.*

*“18 June he went to y<sup>e</sup> house. The prisoner was in y<sup>e</sup> window & held a gun at him. He called to him, & told him y<sup>t</sup> he had y<sup>e</sup> King’s writ, & must have poss<sup>ion</sup>. W<sup>d</sup> not meddle with his p<sup>son</sup>.*

*“Prisoner s<sup>d</sup> L<sup>d</sup> Chanc<sup>r</sup> made an unjust decrec. He s<sup>d</sup> y<sup>t</sup> then he might deliver poss<sup>ion</sup>, & swore damn him he wo<sup>d</sup> not deliver poss<sup>ion</sup>. Saw 2 or 300 people. Read y<sup>e</sup> proclam<sup>n</sup>. Y<sup>e</sup> prisoner fir<sup>d</sup> a gun. Burn<sup>d</sup> his wigg & sing<sup>d</sup> his face. One of his officers s<sup>d</sup> he was shot thro<sup>y</sup> y<sup>e</sup> head. Expostulated again. Y<sup>n</sup> he swore if y<sup>e</sup> King & L<sup>d</sup> Chancellor came he w<sup>d</sup> not deliver it. Several guns were fired. He told him he w<sup>d</sup> give him time till to-morrow morn<sup>g</sup> 8 o’clock. Sent to Capt<sup>n</sup> Sadler, for a few soldiers. The Capt<sup>n</sup> sent them. He went with y<sup>m</sup>. He demanded entrance. Prisoner said damn you, are you come again. A gun was mounted out of a hole cut in*

y<sup>e</sup> door, within an inch of his face: discharged, & it shot Carpenter, who fell with it, & s<sup>d</sup> he was a dead man. Ano<sup>r</sup> gun fired, & shot Hatch, his serv<sup>t</sup>. Rogers had a gun in his hand w<sup>n</sup> he first saw him, & aftw<sup>ds</sup> came out with a gun in his hand.

“Carpenter was a bailiff to y<sup>e</sup> Sheriff, & he had commanded him to goe to his assistance. Mrs. Rogers, y<sup>e</sup> plt. was there both times.

“2. *Geo. Ellis.* 18 June, was desired by Mrs. Rogers to goe with them. Rogers & his wife in y<sup>e</sup> window, & had a gun betw. y<sup>m</sup>. Mr. Fillie demand<sup>d</sup> pos<sup>s</sup>ion. Prisoner s<sup>d</sup> he w<sup>d</sup> not. *Swore & cursed, & s<sup>d</sup> he had strength eno<sup>r</sup> to defend his pos<sup>s</sup>ion ag<sup>st</sup> any p<sup>son</sup>.* Insisted y<sup>e</sup> estate was his. Y<sup>e</sup> Undersheriff expostulated with him, & told him if he had a right, his best way was to submit to y<sup>e</sup> law. Sheriff read the procl. Rogers asked him to drink a dram. He went for it, & in y<sup>e</sup> meantime his wife held y<sup>e</sup> gun. Guns were fired.

“19 June went again. Undersherr. told him he hoped he was in a better mind now, & w<sup>d</sup> deliver him possession now. Refused. A gun fired fro’ y<sup>e</sup> house. Soon after, heard it called out that Carpenter was shot in y<sup>e</sup> back, & a soldier shot in y<sup>e</sup> groin.

“He is a surgeon, & dressed Carpenter; found him shot from ab<sup>t</sup> y<sup>e</sup> fourth ribb to his buttock. Many slugs & jagged pieces of lead in it.

“Betw. 200 & 300 men there y<sup>e</sup> first day, & a great many y<sup>e</sup> second day, but not so many. Mr. J. Street having put out his head, heard y<sup>e</sup> Undersheriff ask him who were in y<sup>e</sup> house. He said only hi; own servants.

“No gun was fired, or any force used by any of y<sup>e</sup> undersheriff’s company till Carpenter was shot.

“3. *Mr. Luky,* surgeon, found a gun shot wound in y<sup>e</sup> small of his back. He saw him Wednesday 19.

Died on Friday: 'twas a great quantity of small shot. Thinks y<sup>e</sup> wound went thro' into his belly.

*“ As to Street.*

*“ 5. Edward Williams. Was at Rogers's house y<sup>e</sup> 19 day of June, 1734. Saw John Street there with a sword in his hand. Kept p'ple in y<sup>e</sup> house, & s<sup>d</sup> he w<sup>d</sup> run any body thro' y<sup>t</sup> offered to goe away. S<sup>d</sup> now was y<sup>e</sup> time to doe a friend service. Assisted Rogers by keeping p'sons in by force. Y<sup>e</sup> Sheriff was y<sup>n</sup> come to demand pos'sion.*

*“ Street was in y<sup>e</sup> house w<sup>n</sup> y<sup>e</sup> firing was.*

*“ Rogers's wife was apprehended by y<sup>e</sup> time y<sup>e</sup> Under-sherr. came to y<sup>e</sup> house.*

*“ The Prisoner. Had good counsell, & tho<sup>t</sup> he had a good right to y<sup>e</sup> estate. Was unwilling to deliver it up y<sup>e</sup> first day. Told him he intended to appeal. S<sup>d</sup> if he did not deliver pos'sion he might bring a writ of rebellion ag<sup>st</sup> him. Sheriff swore he w<sup>d</sup> have pos'sion. Sher. went off, & he did not expect to see him any more. Next morn<sup>g</sup> heard y<sup>e</sup> soldiers were coming. Sent his wife out—they seized her—with beat of drum y<sup>e</sup> Sheriff & soldiers came & fired at him—y<sup>e</sup> soldiers fired ab<sup>t</sup> 5 rounds apiece.*

*“ Verdict—Both Guilty of Murder.”*

The same Henry Rogers, and John Street, were again tried, and found guilty of the murder of George Woolstar, on the same occasion, and in like manner; the evidence being, in substance, the same as that on the above trial.

Rogers was also arraigned and found guilty, on another indictment for a subsequent murder, being that of a constable who endeavoured to apprehend him; and of which trial Lord Hardwicke made copious notes.

The letter from which the following extract is made was at this time written to Lord Hardwicke by his

patron and friend, the Duke of Newcastle. It refers to the proceedings in Cornwall, and the general demeanour of the Chief Justice on the circuit, as also to another matter unconnected with his judicial duties—the recommendation of Mr. Bradley, the famous astronomer, to a post of high importance, and in whose early as also subsequent promotion Lord Hardwicke was mainly instrumental :—

“ Nothing can be so agreeable to me as your correspondence, except the pleasure and instruction of your conversation, which I flatter myself soon with. You have done great justice to the gov<sup>t</sup> of Cornwall, with which I have acquainted the Queen ; but I believe yours was the only letter from Launceston that was silent upon a subject which has struck every body there with equal surprize & approbation ;—I mean the great ability, necessary resolution, and uncommon good nature, that appeared in y<sup>e</sup> judge. As to your recommendation of Mr. Bradley to succeed Dr. Haley, of whose death or indisposition I have no other account but from your letter ; I mentioned it last night to the Queen at cards, & it was received as every thing is that comes from you, and shall be further supported and carried into execution by me, as every thing shall be that you can wish or desire.”\*

A letter, in terms highly complimentary to the conduct of the Lord Chief Justice, and expressive of the satisfaction which he had given on the circuit, was also written about the same time to Lord Hardwicke by Lord Bruce, from Tottenham Park, and in which he invited the Lord Chief Justice and his brother judge on the circuit, Mr. Justice Fortescue, to visit him at his seat.

\* Hardwick : MSS., Wimpole.

After the trial of Rogers, some correspondence took place between Lord Hardwicke and Sir John St. Aubyn, the High Sheriff of the county of Cornwall, as to the expediency of hanging the prisoner in chains. The Chief Justice very judiciously left this point to be determined by the High Sheriff and gentlemen of the county ; and, on his arrival at Bristol, his Lordship received a letter from Sir John St. Aubyn, stating that the matter had been for a long time under consideration, and that it was not thought advisable that Rogers's body should be hung in chains ; as, owing to the disturbed and lawless condition of the county at that period, it might be the means of causing some fresh outbreak. The High Sheriff then continues :—

“ We are highly sensible of your Lordship's attention to every thing which may secure the peace of our county, and it is y<sup>e</sup> greatest happiness to y<sup>t</sup>, and indeed y<sup>e</sup> whole kingdom, y<sup>t</sup> y<sup>r</sup> Lordship had y<sup>e</sup> tryal of this criminal ; for I really believe that no less authority could have settled those doubts which some people had upon this occasion ; and the publick honour which your Lordship has done y<sup>e</sup> magistrates of this county has not only more than repaid them for all y<sup>e</sup> pains and hazards they have been exposed to in this troublesome affair, but must excite in them y<sup>e</sup> greatest constancy and courage in y<sup>e</sup> future discharge of their duty.” After suggesting the expediency of the publication of the trial, he states that the offender “ was executed on y<sup>e</sup> Wednesday, and dyed obdurate, with a lye in his mouth, insensible of any impression from what your Lordship said to him, w<sup>ch</sup> must have moved any heart but that of Rogers.”\*

\* Hardwicke MSS., Wimpole.

To this letter Lord Hardwicke replied as follows:—

*“ Carshalton, Aug. 27, 1735.\**

“ SIR,—I received y<sup>e</sup> honour of y<sup>r</sup> letter at Bristol, amidst y<sup>e</sup> hurry of business and entertainments, with which that place always finds us full employment. For this reason I deferred sending you my acknowledgments of it, till I could find an opportunity of doing it in a manner more suitable to y<sup>e</sup> occasion.

“ As to y<sup>e</sup> opinion which you are pleased to inform me had been conceived by yourself and y<sup>e</sup> other gentlemen of y<sup>e</sup> county, relating to Rogers being hanged in chains, I own I could have wished that circumstances of time, & y<sup>e</sup> disposition of y<sup>e</sup> common people, would have born such an example; but it must be admitted that, in things of this nature, it sometimes happens that the same spirit which makes such a measure just and fit, doth also render it hazardous to attempt it; & I entirely agree with you that it might have been very unfortunate in y<sup>e</sup> event to have given y<sup>e</sup> rabble an opportunity of striking y<sup>e</sup> last blow, or having any new triumph. I submit, therefore, to y<sup>e</sup> sentiments of those, whose perfect knowledge of the country enables them to make y<sup>e</sup> best judgment of this affair, & whose laudable zeal in supporting y<sup>e</sup> authority of y<sup>e</sup> law, and bringing y<sup>e</sup> criminals to justice, must convince every body y<sup>t</sup> y<sup>e</sup> judgment they make is impartial.

“ Tho' I am extremely sensible how defective my part in y<sup>e</sup> trial must appear, yet if any benefit could arise from printing it, either to y<sup>e</sup> public in general, or to your county in particular, I should readily give way to it, in case it were practicable. But as no short-hand writer was employed, and I have not y<sup>e</sup> least note of any thing

\* Har.wicke MSS., Wimpole.

y<sup>t</sup> passed, except y<sup>e</sup> evidence of facts to assist my memory, I find it will be impossible to doe it. Accounts of proceedings of this kind never have been, nor ought to be, published by y<sup>e</sup> authority of the judges, but in such a degree of perfection as may make them fit to see the light, and likely to give satisfaction to mankind ; and you will easily be sensible that when that cannot be attained, y<sup>e</sup> publication may possibly have a contrary effect from y<sup>t</sup> which is intended by it.

\* \* \* \* \*

“ I beg leave to return my unfeigned thanks for y<sup>e</sup> great civilities I received fro’ yourself and y<sup>e</sup> rest of y<sup>e</sup> gentlemen in Cornwall, and for y<sup>e</sup> obliging wishes and expressions in y<sup>r</sup> letter, and to assure you y<sup>t</sup> I am with the greatest respect, &c.

“ HARDWICKE.”

At Wells, where Lord Hardwicke presided on the Crown side, a trial of an extraordinary nature is recorded in his notes, being that of a clergyman for bigamy, and which served to illustrate the imperfect state of the matrimonial code at this period.

The next case was one arising out of the lawless and insubordinate state of the country, the condition of which the evidence afforded serves to evince.

• “ Aug<sup>d</sup> 15. The King ag<sup>st</sup> Tho<sup>s</sup> Caning, Jun<sup>r</sup> *et alios*.

“ Indictment for riot & other misdemeanors.

“ Plea—Not Guilty.

“ *Mr. Hussey, pro rege.*

“ *Walter Baker.* 1 July, 1734, he had hired a bull to have some bull-baiting—a large company of 3 score & 11 came fro’ West Lidford—asked w<sup>re</sup> y<sup>e</sup> bull was—found it, & played as long as they pleased—began to be tumultuous—y<sup>e</sup> bull-keeper came to him & desired him

to pay him, for he was afraid they w<sup>d</sup> kill him & his bull.

“ Thomas Caning y<sup>e</sup> younger, & y<sup>e</sup> rest of def<sup>ts</sup> there. All in his house.

“ Thomas Caning, y<sup>e</sup> younger, came & by force drove out his bro<sup>r</sup>; & Ab<sup>m</sup> Natt, Williams, Rob<sup>t</sup> Deck & W<sup>m</sup> Chapman came & s<sup>d</sup> they w<sup>d</sup> have his money or they w<sup>d</sup> kill him.

“ W<sup>m</sup> Chapman threat<sup>d</sup> to kill [him], & pull down his house—broke his windows, & threatened to kill his wife—threw her down, & trod on her legg. Lost her money. Knocked down his son.

“ Soon after they came into y<sup>e</sup> house, fell to drawing drink for themselves.

“ Flung stones at y<sup>e</sup> windows, & broke 7 windows—wounded him in several places in y<sup>e</sup> leg with y<sup>e</sup> stones—one of y<sup>e</sup> stones weighed 24 &  $\frac{3}{4}$ . One of y<sup>e</sup> stones hit him on y<sup>e</sup> breast.

“ Came away from his house, & left y<sup>m</sup> in pos<sup>'</sup>sion of it. Returned again ab<sup>t</sup> 12, & found y<sup>m</sup> in it, but durst not go in.

“ Y<sup>e</sup> morning after he came there, & found they had drawn out y<sup>e</sup> greatest part of his drink. Y<sup>e</sup> house much demolished; found a cartload of stones in & ab<sup>t</sup> it.

“ +*exam.* Had asked a few folks of his own to attend.

“ *Judith Baker.* 3 score & 11 came up, went to y<sup>e</sup> bull-baiting. All y<sup>e</sup> def<sup>ts</sup> in y<sup>e</sup> house; drew y<sup>e</sup> liquor; flung stones at y<sup>e</sup> house; W<sup>m</sup> Chapman caught her by y<sup>e</sup> pocket; threatened to have her money.

“ *Mary Higden.* Was in y<sup>e</sup> highway—saw all y<sup>e</sup> def<sup>ts</sup> there; Walter Baker y<sup>e</sup> landlord begged for his life; great noise and tumult; about forty p<sup>'</sup>s<sup>n</sup>s there.

“ *Mr. Prat, pro. def.* Rough doings at bull-baitings.

“ Y<sup>e</sup> man proclaimed a bull-baiting.

“ Not an unlawful assembly.

“ Dispute betw. y<sup>e</sup> Ditchot people and Lidford people.

“ Baker carried y<sup>e</sup> challenge.

“ *Eliz. Pyke.* Saw def<sup>ts</sup> at y<sup>e</sup> bull-baiting. All def<sup>ts</sup> came to her father’s house ab<sup>t</sup> 9 o’clock in ev<sup>g</sup>; staid till 11; above a stone’s cast off fro’ Baker’s. . . .

“ *John Frazer.* At y<sup>e</sup> bull-bait. Saw nothing but what was usual.

“ Did not tell Baker, y<sup>t</sup> he was afraid of be<sup>g</sup> murd<sup>d</sup>, and sho<sup>d</sup> go to y<sup>e</sup> bull house; nobody offend<sup>d</sup> him; saw quant<sup>s</sup> of people; saw no assault there.

“ *Reply.* . . . .

“ Verd. Tho<sup>s</sup>. Caning, not guilty.

“ Y<sup>e</sup> rest guilty.”

Another letter was addressed by Lord Hardwicke to Mr. Baron Comyns, in answer to an application asking the Chief Justice to use his influence with the Government in obtaining for the writer promotion to the Chief Justiceship of the Common Pleas, should that office become vacant. The friendly tone, and very candid manner of Lord Hardwicke’s reply, in which he discountenanced the petition, are deserving of admiration; and these qualities seem to have induced his acquaintance, on all emergencies, to resort to him both for assistance and advice.

From the following passage in Lord Hardwicke’s letter on this occasion, it would appear that the Chancellorship was actually offered to him, prior to his appointment to the Chief Justiceship of England; but that he preferred the latter office.

“ Before I leave this subject, permit me to take the

\* Hardwicke MSS., Wimpole.



“ May you enjoy perfect health and long life, first for your own sake, then for y<sup>e</sup> sake of many thousands, who will have reason to bless and praise you for the good that you will do in the station the King has been pleased to place you, and likewise for the great benefit the nation will receive from your services.”\*

An event of considerable national importance occurred at this time, in the marriage of Frederick Prince of Wales, the heir apparent to the throne, with the Princess of Saxe-Gotha, who was the sister to the reigning Duke, and a Protestant. This match was concluded with the full approbation of their Majesties ; and after the most mature deliberation. The manner in which both the Prince and Princess were by subsequent events associated with Lord Hardwicke, renders this a matter of interest in the present history.

During the session which was held in the year 1736, a bill was introduced and passed for naturalizing Her Royal Highness the Princess of Wales. The statutes of England and Scotland against conjuration, witchcraft, and dealing with evil spirits were repealed in the same session. Whether Lord Hardwicke took any active part in aiding or procuring these measures, does not appear.

A bill was this session brought into the House of Commons to restrain the disposition of lands in mortmain, whereby they became unalienable. Against this measure petitions were presented by the two universities, the colleges of Eton, Winchester and Westminster, and several hospitals that subsisted by charitable donations. A particular exempting clause was inserted in favour of the universities and colleges.

The bill was read a first time in the House of Lords

\* Hardwicke MSS., Wimpole.

on the 8th of April, a second time on the 20th, and on the 5th of May the House resolved itself into a committee upon it.

The Duke of Somerset, who was Chancellor of the University of Cambridge, addressed Lord Hardwicke a letter, urging him to oppose this bill as calculated to be injurious to the universities. No debate, however, on the second reading of it took place in the House of Lords; but the following "Notes of what was intended to have been spoke in the House of Lords, in case there had been a debate on the merits of y<sup>e</sup> bill," as expressed by the indorsement on them in Lord Hardwicke's own handwriting, serve to evince his sentiments on this very important topic. The opinions here of one who was so great a lawyer, so thoroughly conversant with the principles of real property jurisprudence, and so eminent a constitutional authority, are well worthy of being preserved. This document is also of deep interest, as exhibiting Lord Hardwicke's mode of preparing himself for speaking in Parliament on a great question.

"Bill don't concern party, this or that administration, &c.

"*Qu.* W<sup>r</sup> it tends to advance or secure y<sup>e</sup> general welfare of this kingdom to posterity?

"Great pleasure, &c.

"Think it highly useful, if not abs. nec.

"1. for y<sup>e</sup> preservation of y<sup>e</sup> true ballance of this constitution to future ages.

"2. for y<sup>e</sup> advancem<sup>t</sup> of y<sup>e</sup> general interest, trade, and flourishing state of y<sup>e</sup> kingdom.

"First point—proved fro' y<sup>e</sup> nature and history of government in gen<sup>l</sup>.

"Allowed maxims—*Power follows property*, especially *property in land*.

“ Has consequences, dependencies, w<sup>ch</sup> other property has not.

“ If true, follows y<sup>t</sup> wherever you place a perpetual, unalienable property in land, you place at y<sup>e</sup> same time, in a proportionable degree, a fix’d, perpetual *power & dependence*.

“ All legislators and founders of governments sensible of this.

“ For this reason *Agrarian laws*.

“ In y<sup>e</sup> ancient common wealths of Jews, Greeks, and Romans, diff<sup>t</sup> models.

“ Limitation of quantity —rotation.

“ Gothic governments—after fall of Roman empire, proceed<sup>d</sup> on diff<sup>t</sup> principles, founded on a diff<sup>t</sup> plan.

“ Conquest—settlement.

“ Prince or general distributed lands in large districts amongst leaders or chief officers, to be held of himself by certain services.

“ Com. people their vassals—and tenants at will.

“ *Fiefs* — at first unalienable— afterwards to be kept unadim<sup>ish</sup>—not allowed with<sup>t</sup> licence or *great fines* paid.

“ Reason of this—to maintain p<sup>r</sup>’s’n. serv.

“ Dispute w<sup>t</sup> subsisted in England before y<sup>e</sup> *Norman Invasion*, or bro<sup>t</sup> in by it.

“ What y<sup>e</sup> consequence—so true this principle y<sup>t</sup> power follows y<sup>e</sup> property in land, y<sup>t</sup> y<sup>e</sup> great men who had y<sup>ese</sup> large dem<sup>s</sup> hac<sup>d</sup> y<sup>e</sup> whole power.

“ The govern<sup>t</sup> became almost an aristocracy, and y<sup>t</sup> of y<sup>e</sup> worst kind—a turbulent military aristocracy.

“ Distressed y<sup>e</sup> crown—oppressed y<sup>e</sup> people at pleasure —y<sup>e</sup> one an instrument in their hands—y<sup>e</sup> o<sup>r</sup> their slaves.

“ History of y<sup>e</sup> *Flower’s wars* proves this.

“ Admit they o<sup>l</sup> tained many good laws fro’ y<sup>e</sup> crown

—by wise construction and exposition since applied to general liberty—at first intended to secure their *own* partic. *freedom & power*.

“ In y<sup>e</sup> reign of Edw. I. they found *their power decreasing*—13 of his reign prevailed to gr<sup>t</sup> y<sup>e</sup> stat. of *entails*.

“ This invested every owner of lands with y<sup>e</sup> power to put y<sup>m</sup> out of a capacity of being aliened, *even with<sup>t</sup> y<sup>e</sup> licence* of y<sup>e</sup> crown.

“ Mischiefs of this soon felt.

“ Several attempts in Parliament to repeal y<sup>e</sup> law ; but y<sup>e</sup> men of great power in those days refused to consent.

“ At last, ab<sup>t</sup> 12 Ed. 4, the judges by a wise exposition—application of y<sup>e</sup> rules, nay fictions of law,—found out a method to make est<sup>cs</sup> tail alienable. Com. recoveries y<sup>n</sup> first introduced.

“ From whence was this copied ? From y<sup>e</sup> practice of collusive remedies by y<sup>e</sup> clergy to clude y<sup>e</sup> stat. of mortmain, Inst. 429—this y<sup>e</sup> act of y<sup>e</sup> judges—so right in in itself—y<sup>e</sup> thing at last made its own way. The plain reason and public utility of it carried it thro’—their judgment rec<sup>d</sup> y<sup>e</sup> sanction of Parliament.

“ In reign of Hen. 7, a prince of great foresight and policy, this doctrine of com. recoveries, aliening estates tail, was more fully established—new laws made, introducing new facilities in barring estates tail. Fine now made a bar to y<sup>e</sup> issue in tail.

“ This, together with y<sup>e</sup> stat. of population, y<sup>e</sup> ground of w<sup>t</sup> is commonly said of y<sup>t</sup> prince’s breaking y<sup>e</sup> power of y<sup>e</sup> barons.

“ The happy consequences arising from hence to y<sup>e</sup> whole nation visible.

“ The *constitution* has been bro<sup>t</sup> to a truer balance.

“ Liberty has been much more generally diffused thro’ y<sup>e</sup> whole body of y<sup>e</sup> people.

“ The nobility are become a middle state—security to y<sup>e</sup> crown ag<sup>st</sup> encroachments—protection to y<sup>e</sup> people ag<sup>st</sup> invasion of their liberties by the crown.

“ Trade and arts encreased and flourished.

“ Apply this.

“ Have y<sup>r</sup> lordship’s ancestors, for national considerations, for y<sup>e</sup> sake of public utility, permitted their estates to become alienable—parted with a great share of their own power ?

“ Will you suffer another estate of y<sup>e</sup> kingdom to go on perpetually encreasing in unalienable property : or y<sup>e</sup> same thing to arise in another shape of mistaken charity ?

“ Approve ample endow<sup>ts</sup> in y<sup>e</sup> church—lament, as much as any man, small livings—*might be helped a little by restraining pluralities.*

“ However fit for y<sup>e</sup> legislature to set bounds—’tis a public consideration.—Every body not to be suffered to alter or affect y<sup>e</sup> balance of power and property at p<sup>l</sup>easeure.

“ At present no bounds. Stat. 43 Eliz. c. 4, lets in all kinds of imaginary charities, not so much as a *licence in mortmain* wanting—may give to poor—church—dissenters.

“ No obj<sup>n</sup> y<sup>t</sup> y<sup>e</sup> mischief wont arrive in a few years.

“ 2. *My other general reason.*

“ Y<sup>e</sup> general interest and trade of y<sup>e</sup> kingdom.

“ What is y<sup>e</sup> great incitement to industry and merit in trade, study, or y<sup>e</sup> profession of arms ? Founding families—if cut off from all opportunities of realizing,\* are scarce incorporated into y<sup>e</sup> body of y<sup>e</sup> people.

Acquiring real property.

“ A separate disjointed set of people, like the Jews.

“ Qualification to sit in Parliament.

“ This may come to be y<sup>e</sup> case.

“ The church and perpetual charities had formerly above half y<sup>e</sup> lands. [*Book.*]

“ *Obj. Bill prohibits—stops up y<sup>e</sup> channels of charity.*

“ *Ans.* Charity a noble, a necessary duty—not consist entirely in *alms-giving*—much less in *perpetual alms*.

“ Church of Rome flourished in y<sup>t</sup> species of charity—w<sup>n</sup> she had almost banished y<sup>e</sup> very notion of y<sup>t</sup> virtue out of her system of Xtianity.

“ Duty of y<sup>e</sup> present case – y<sup>e</sup> end best attained by present benefactions.

“ Death-bed charity—death-bed repentance.

“ Vanity—superstition—abuses—*faction*.

“ Sufficient room left for useful charities—money—stocks—distributed.

“ Will nothing satisfy but y<sup>e</sup> lands of y<sup>e</sup> kingdom ?

“ *Hospitals—schools.*

“ *Another argument for y<sup>e</sup> bill.*

“ Security of y<sup>e</sup> church—and of y<sup>e</sup> prest<sup>t</sup> useful charitable foundations.

“ If possessed of one of those eminent, well endowed dignities—w<sup>d</sup> consider y<sup>e</sup> good of y<sup>e</sup> succession—w<sup>d</sup> be for this bill.

“ Transmit my vote for it, in y<sup>e</sup> reg<sup>n</sup> of my see.

“ ’Twill fortify y<sup>e</sup> enjoyment of what they have.

“ Enterprising prince may be tempted.

“ The excess in Hen. 8<sup>th</sup>s time.

“ Wise to prevent y<sup>e</sup> temptation.”\*

After some discussion on different sections of the bill relating to the universities, and Queen Anne’s bounty—

“ Lord Hardwicke took notice, that the general words in the restrain-

\* Hardwicke MSS., Wimpole.

ing clause might, in some cases, affect purchases for a valuable consideration ; therefore he moved that the following proviso should be inserted in the bill, viz.:—‘ Provided always, that nothing hereinbefore mentioned relating to the sealing and delivery of any deed or deeds twelve calendar months at least before the death of the grantor, or to the transfer of any stock six calendar months before the death of the grantor or person making such transfer, shall extend or be construed to extend to any purchase of any estate in lands, tenements, or hereditaments, or any transfer of any stock to be made really and *bonâ fide* for a full and valuable consideration, actually paid at or before the making such conveyance or transfer, without fraud or collusion.’

“ This was objected to by some lords as being unnecessary, and as it would afford a handle for evading the law ; for as conveyances of land estates might be, according to the laws of this kingdom, made by persons on their death-bed, it would be easy for any charitable corporation or body politic to pay a full and valuable consideration in ready money at or before the making of any such death-bed conveyance or transfer, and at the same time to have a will made whereby the sum so paid should be left them by way of legacy, which would be a good bequest, and with that legacy the body politic might replace the money which they had laid out upon the purchase ; but it being the general opinion that such a conveyance and bequest would be interpreted as made by fraud or collusion in order to evade the law, and would not therefore be within the proviso ; and it being thought that it would be a great hardship upon all bodies politic to make void every purchase or transfer they could afterwards make or receive, in case the granter or person who made the transfer should by accident die within a twelvemonth after such purchase, or within six calendar months after such transfer, even though really and *bonâ fide* made for a full and valuable consideration, paid at or before the making of such purchase or transfer, therefore it was agreed that the proviso offered should be inserted and made part of the bill.”\*

Some other amendments were made in the bill, when it passed through the House, and afterwards received the Royal assent.

No separate account of the different arguments used by each speaker, is preserved in the report of the debate on the Quakers Title Bill ; but a general summary only

of the whole discussion on either side is given, in which it is stated that Lord Hardwicke opposed the bill.

After this, followed another debate respecting the committal of the bill, during which, in reply to Lord Hervey, who had proposed taking away from persons owning tithes the option of suing for them either in the civil or the ecclesiastical courts, on the ground that the Quakers had scruples of conscience against appearing in the latter, and which proposal was supported by the Duke of Argyll:—

“Lord Hardwicke said that he would have been very glad to have joined in anything for that session; and the proposition the noble lord had made would not remedy all the Quakers complained of, nor could it, in his opinion, be executed in the committee, for it would be necessary for them, before they could draw up or agree to any such clause, to consider the methods of proceeding in most of the courts in Westminster Hall, and to alter some of them, which they could not pretend to do without a great deal of deliberation. And moreover, that in order to execute what was proposed, it would be necessary for them to drop, not only the whole body of the bill, but a great part of the preamble, and even the title would require to be entirely altered; in which case it could not in any sort of propriety be called the same bill that had passed in the other house and had been twice read in that; therefore he continued in his former opinion, and consequently was against committing the bill.

“The question being then put upon the first motion for committing the bill, it was, upon a division, carried in the negative, by 54 not contents to 35 contents.”\*

On Saturday, the 5th of June, 1736, there was a call of fourteen serjeants, among whom we recognise Lord Hardwicke's friend and former colleague Parker, and Mr. Kettleby, whose name has once or twice before appeared in these pages. On this occasion, the Chief Justice delivered to the new serjeants, in the Middle Temple Hall, an address, remarkable for its elegant

\* Hansard's Parl. Hist.

phraseology and the soundness of the sentiments contained in it, and of which there is a copy among his papers.

On the call of the serjeants in question, a dispute arose between the two Societies of the Temple, as to which of them was entitled to precedence. A long memorial on the subject, drawn up by Mr. Kettleby, the Treasurer of the Middle Temple, is among the Hardwicke MSS.

It was stated in the course of the discussion, that on a similar occasion in Gray's Inn Hall, in the year 1705—

“There was a tumultuary dispute between the Middle and Inner Temple Societies about precedence, and some blows; upon which several gentlemen prudently withdrew, and at last things were quieted for that time, in honour of the Lord Chief Justice, who presided there.”

An occurrence of a very extraordinary nature, and which caused considerable sensation, took place about this time. The following account of it, from a memorandum in Lord Hardwicke's handwriting, is contained in one of his note-books of cases tried before him.

“*July 14, 1736.*

“On this day, being y<sup>e</sup> last day y<sup>e</sup> term, a most impudent & audacious act of sedition was perpetrated in Westm<sup>r</sup> Hall. Ab<sup>t</sup> the hour of two, y<sup>e</sup> Hall being then fullest of people, a parcel or packet contain<sup>g</sup> several papers, & some sheets of sev<sup>l</sup> Acts of Parliam<sup>t</sup>, & likewise a quantity of gunpowder, was laid on the step which runs along on y<sup>e</sup> outside of y<sup>e</sup> Chancery bar; & being observed to smoke, was thrown from thence upon y<sup>e</sup> land<sup>s</sup> place of the stairs w<sup>ch</sup> ascend to the Courts of Chan. & King's Bench, where it fired & blew up, both those c<sup>t</sup> as well as the Com. Pleas, being

then sitt<sup>g</sup>. The Hall was instantly filled with smoke, & at y<sup>e</sup> instant, either by means of y<sup>e</sup> explosion of y<sup>e</sup> gunpowder, or by being dropped during the hurry & confusion, or most probably by both those ways, were dispersed great numbers of seditious libels in y<sup>e</sup> words & figures following :—

“ ‘ *Wednesday, July 14, 1736.*

“ ‘ By a general consent of the citizens & tradesmen of London, Westm<sup>r</sup> & y<sup>e</sup> Boro’ of Southwark, this being the last day of term, were publicly burnt between the hours of twelve & two at the Royal Exchange, Cornhill, at Westm<sup>r</sup> Hall (the Court then sitting) & at Margarets Hall, Southwark, as destructive of the product, trade, & manufacture of this kingdom, & the plantations thereunto belonging, & tending to y<sup>e</sup> utter subversion of y<sup>e</sup> liberties & properties thereof, the five following finished books or libels, called Acts of Parliam<sup>t</sup> viz. :— 1. An Act to prohibit the sell<sup>g</sup> of distilled spiritual liquors, &c. 2. An Act entirely to extinguish y<sup>e</sup> small remains of charity yet subsisting amongst us. 3. An Act to prevent carriages & passengers coming over London Bridge, to y<sup>e</sup> great detriment of y<sup>e</sup> trade and commerce of y<sup>e</sup> City of London, & y<sup>e</sup> Boro’ of Southwark. 4. An Act to seize all innocent gentlemen travelling with arms for their own defence, called the Smugglers Act. 5. An Act to enable a Foreign Prince to borrow £600,000 of money sacredly appropriated to the payment of our debts.

“ ‘ God Save the King.’

“ ‘ Sev<sup>l</sup> of these papers being brought into the Court of B.R., I directed y<sup>e</sup> persons, who produced them to go immedi<sup>ly</sup> before the Grand Jury of Middlx. then sitting, to exhibit some of y<sup>e</sup> libells to them, & make oath of y<sup>e</sup> manner & circumstances of their being published & found, to y<sup>e</sup> end y<sup>t</sup> y<sup>e</sup> Gr<sup>d</sup> Jury might make a proper

presentm<sup>t</sup> to y<sup>e</sup> Court of y<sup>e</sup> Authors & actors in this unparalleled piece of sedition & contempt, if found, or, if not found, a gen<sup>l</sup> presentm<sup>t</sup> of y<sup>e</sup> fact. In less than an hour afterwards, y<sup>e</sup> Gr. Jury unanimously brought into Court in writing signed by them, a presentm<sup>t</sup> of the s<sup>d</sup> printed paper as a wicked, false, infamous, & scandalous libel, highly reflecting on His Majesty & y<sup>e</sup> legislative power of His Kingdom ; & tending very much to alienate, poison, & disturb y<sup>e</sup> minds of His Ma<sup>j</sup><sup>ties</sup> subjects ; & did also present the author, printer, and publisher, of the s<sup>d</sup> wicked, false, infamous, & scandalous libel as guilty of a very high crime & misdemeanour, & did request y<sup>e</sup> Court to give directions to y<sup>e</sup> proper officers to make strict search & enquiry after y<sup>e</sup> s<sup>d</sup> author, printer, & publisher of y<sup>e</sup> s<sup>d</sup> wicked, false, infamous, & scandalous libel, & to give directions to such officers effectually to prosecute y<sup>e</sup> author, printer, & publisher thereof, in order that they might be bro<sup>t</sup> to condign punishm<sup>t</sup> for so great an offence.

“ After this presentm<sup>t</sup> had been seen, I made a short speech to y<sup>e</sup> Gr. Jury, approving & commending their justice & zeal on this occasion ; setting forth the heinousness of y<sup>e</sup> crime ; & expressing y<sup>e</sup> indignation of y<sup>e</sup> Court at such an instance of sedition & contempt ; concluding with a direction to y<sup>e</sup> Justices of y<sup>e</sup> Peace, & proper officers to endeavour to find out & bring to condign punishm<sup>t</sup> y<sup>e</sup> persons concerned therein.

“ On y<sup>e</sup> 16 July, y<sup>e</sup> Queen, being y<sup>e</sup> guardian of y<sup>e</sup> realm, in y<sup>e</sup> King's absence, did, with y<sup>e</sup> advice of y<sup>e</sup> Privy Council, publish a procl<sup>n</sup>, entitled a procl<sup>n</sup> for discovering y<sup>e</sup> persons concerned in a wicked & audacious outrage committed in Westminster Hall, during the sitting of His Ma<sup>j</sup><sup>ties</sup> upon y<sup>e</sup> 14<sup>th</sup> of this inst<sup>t</sup>, July, & y<sup>e</sup> author, printer, and publisher, of a false, malicious, &

treasonable libel then and there dispersed. Hereby £200 reward was offered for every one of the offenders, who shou<sup>d</sup> be discovered & convicted."

There is one of the printed copies of the libel among Lord Hardwicke's papers. It is of just half the size of the page in the present volume.

About the same time, great disturbances arose in different parts of London, and tumultuous mobs of people of the lower class perambulated the streets at night. The principal objects of their hatred appear to have been the Irish, and the Gin Act. By the former, they declared they were starved, in consequence of all the work being monopolised by these industrious visitors. By the latter, they discovered that they were deprived of their commonest consolation in adversity, by which they were unhappily wont to drown alike their cares, and their intellects. The "low Jacobites," were of course accused of being the originators of all the dissension and mischief.

The following letter in reference to the extraordinary outrage in Westminster Hall, was addressed by Mr. Walpole to the Duke of Newcastle, who had accompanied the King to Hanover. Lord Hardwicke seems to have reaped advantage by the affair, from the credit he obtained in the eyes of his Sovereign, for his conduct on this occasion.

*"Hanover, July 25—Augt. 5, 1736.\*"*

"MY LORD,—I have laid before the King your Grace's letter of the 16<sup>th</sup> July, O.S. with the minutes of the council & of papers inclosed, containg a particular relation of a very extraordinary insult that had been committed in Westminster Hall, the Wednesday before, upon His

\* Hardwicke MSS., Wimpole.

Majesty's authority, the whole Legislature, & the principal Courts of Justice of the Kingdom, by the explosion of some gunpowder, & by that means scattering several treasonable papers about. His Majesty was extremely moved at so daring, & outrageous an attempt, in the face of justice, directly intend<sup>d</sup> to cast malicious reflections upon His Governm<sup>t</sup>, & to stir up his subjects to sedition, in open defiance of the laws. But the King was no less pleased at the presence of mind, & spirit of L<sup>d</sup> Hardwicke, in stopp<sup>d</sup> immediately the proceed<sup>gs</sup> and business, to express his resentment, & detestation, in open court, of such an audacious insult on the King & whole legislature, by setting forth the heinousnes of the offence, & by giving the proper directions to the Grand Jury, & Justices of the Peace, that the authors might be discovered, & the laws put in execution.

“ His Majesty perfectly approved the orders, that the Queen thought fit to give to discover & bring to justice, the persons concerned in this wicked action, by immediately issuing a proclamation for that purpose; & was greatly satisfied with the zeal that was shown by his faithful servants upon this occasion, taking particular notice of your grace's care & attention, in losing no time & sparing no pains for finding out the authors, that they may suffer the punishm<sup>t</sup> they deserve.

“ I am, &c.,

“ H. WALPOLE.”

The spirit of disaffection and disorder so prevalent in England, had spread into Scotland also, and Edinburgh became at this period the scene of a tumultuous outrage of the most flagrant kind, as will be seen by the following narrative of the transaction in question.

During a riotous proceeding which had taken place in

that city some time previous, the military, by the orders of their commanding officer, Captain Porteous, fired on the mob, and killed some of the ringleaders. This act was considered not justifiable. Captain Porteous was accordingly tried for the murder of the persons so killed, found guilty of the charge, and sentenced to death. Under the circumstances, however, it was thought proper to submit his case to the consideration of government, and it was deemed not improbable that a commutation of his sentence, if not an absolute pardon, would be granted him. The common people in Edinburgh, still regarded him as a murderer, and indignantly demanded his execution; and on the rumour of a reprieve having been granted to him, forcibly broke open the gaol where he was confined, which they set on fire, and seizing on their victim, actually proceeded to hang him by the neck until he died.

A question arose during the month of July in this year, whether, after the consecration of a bishop, his temporalities should be restored to him, where he was unable to do homage to the King on account of His Majesty's absence from this country, he being at that time in Hanover. The matter was referred by the Duke of Newcastle, and the other Lords Justices, to Lord Hardwicke, who wrote to the Duke, expressing his opinion that the Queen, or the Lords Justices, might receive the homage, as the representatives of the King during His Majesty's absence;\* a course which Lord Hardwicke, when Sir P. Yorke and Solicitor-General, had once before advised, in conjunction with Sir R. Raymond, on a similar circumstance occurring in 1723. The following is the Duke of Newcastle's reply to Lord Hardwicke's letter on this occasion, from which

\* Hardwicke MSS., Wimpole.

it would appear that the Chief Justice was rapidly increasing in favour, both with the court and the administration.

“ *Newcastle House,*

“ *Fryday Morning.\**

“ MY DEAR LORD,—You cannot imagine how pleased I have been to see how just a sense the Queen, and our friend, has of your goodness and attendance this last week. Your letter of yesterday has given infinite satisfaction, and I know the Queen has wrote to Hanover in y<sup>e</sup> kindest manner upon your subject. I send you the writ<sup>ts</sup>, w<sup>ch</sup> I begg you would return most carefully to Mr. Stone. Nobody sees them but you. We shall have most material business att S<sup>r</sup> Robert’s† on Tuesday next, so I beg it as y<sup>e</sup> greatest favour that you would not fail to dine there that day.

“ Dear Hardwicke, without you we are nothing.

“ I am ever, most affectionately y<sup>rs</sup>,

“ HOLLES NEWCASTLE.

“ Lord Hardwicke.”

Lord Hardwicke did not go the Spring Circuit in 1736, but, by his note-book, it seems that he attended the assizes on the Midland Circuit during the summer of this year. At Northampton, the first town on the circuit, his Lordship presided on the Crown side, where a case of deep interest was tried, being the following one for murder by poison. The evidence adduced is entirely circumstantial, but more satisfactory than is generally obtained in cases of this description.

“ *Crown Side.*

“ Northampton Summer Assizes, Aug. 5, 1736.

“ *The King ags<sup>t</sup> Mary, the wife of John Haddon.*

\* Hardwicke MSS., Winpole.

† Sir Robert Walpole’s.

“Indictm<sup>t</sup> for poisoning Eliz. Elkington, prisoner’s mother.

“*Tho. Harford.* The Friday after Shrove Tuesday, Eliz. Elkington, being very ill, ’twas tho<sup>t</sup> she was poisoned. Y<sup>e</sup> woman died next day. He supposed y<sup>t</sup> it was with y<sup>e</sup> ratsbane w<sup>ch</sup> she [prisoner] sent him for on pretence of an itching sore in her legg. He went to her on Thursday following, & she s<sup>t</sup> y<sup>t</sup> she perceived y<sup>t</sup> y<sup>e</sup> 1<sup>d</sup> of stuff she bo<sup>t</sup> was gone. He s<sup>d</sup> he perceived y<sup>t</sup> she had it safe. She s<sup>d</sup>, You must say you dropt it by y<sup>e</sup> way. How can I say so when you know I gave it you. You must say so. He bought it on Friday. ’Twas half an ounce.

“*James Wilson.* Apothecary at Daventry. On Friday y<sup>e</sup> miller came to y<sup>e</sup> shop for a pennyworth of ratsbane. Asked what he wanted to do with it? S<sup>d</sup>, For a poor woman for an itching humour. Asked if she knew it was poison? Yes.

“*Wm. Elkington.* Prisoner’s brother. Y<sup>e</sup> Thursday after y<sup>e</sup> old woman died, he asked her what she did with y<sup>e</sup> stuff w<sup>ch</sup> ye miller bo<sup>t</sup>. S<sup>d</sup> she used some of it for her sore legg—that she had y<sup>e</sup> rest by her tyed up. She had a sore legg. He asked to see y<sup>e</sup> rest. [She s<sup>d</sup>] What has any body to do with my legg? Y<sup>e</sup> prisoner & her mother lived together in y<sup>e</sup> same house. Dutiful to her. In Nov<sup>r</sup> 83 y<sup>rs</sup> old.

“*Anne Gibbs.* She saw betw. 10 and 11 y<sup>e</sup> old woman vomit on Saturday. Y<sup>e</sup> first she vomited looked yellow; afterwards it was green. She had been ailing all y<sup>e</sup> winter, but don’t know she was troubled with vomitings. Y<sup>e</sup> dau<sup>r</sup> took away y<sup>e</sup> pot.

“Saw nothing of milk or victuals in it.

“*Charles Wildgoose.* Surgeon. Y<sup>e</sup> Monday se’nnight was at y<sup>e</sup> taking y<sup>e</sup> body out of y<sup>e</sup> coffin. Y<sup>e</sup> body . . . & . . . took out of y<sup>e</sup> stomach

ab<sup>t</sup> half a pint of liquor . . . . or . . . .  
 colour & . . . . At y<sup>e</sup> bottom of y<sup>e</sup> stomach a  
 slight inflammation; y<sup>e</sup> rest of y<sup>e</sup> body sound; little  
 smell; y<sup>e</sup> liquor given to a dogg on Tuesday in y<sup>e</sup> after-  
 noon; died next morning; vomited and purged before  
 he died, being such symptoms as are y<sup>e</sup> effect of rats-  
 bane. Y<sup>e</sup> night he opened y<sup>e</sup> body he looked upon y<sup>e</sup>  
 prisoner's legg; had been an ulcer, & had been healed  
 up for some time before; y<sup>e</sup> ratsbane c<sup>d</sup> not do y<sup>t</sup>;  
 but if it had been lately running y<sup>e</sup> ratsbane applied  
 might have had an effect to dry it away. Has been  
 at y<sup>e</sup> opening of bodies; observed such liquor, but  
 this of a higher colour; but might be so fro' being so  
 long buried, for aught he knows.

"*Alice Fellows*. Saw y<sup>e</sup> deccased vomit at y<sup>e</sup> same  
 time y<sup>t</sup> Mrs. Gibbs saw it; w<sup>t</sup> she vomited was yellow,  
 afterwards green. Saw no milk or victuals in it.

"*Mary Haddon, prisoner*. Did her mother no harm.  
 Her legg had been sore, and y<sup>n</sup> an itching was come on  
 it, and she sent for y<sup>e</sup> ratsbane for it. Used it all  
 ab<sup>t</sup> her legg.

"*Harford*. [Prisoner bears] a moderate character.

"*Anne Gibbs*. [Known prisoner] 13 years. Very  
 dutiful to her mother. Did whatever she was desired.

"*Alice Fellows*. [Known prisoner] 20 years. Never  
 knew but she was reckoned an honest woman. Dutiful  
 to her mother.

"Guilty."

Another case which was here tried, is principally im-  
 portant from the circumstance of a point in it having  
 been reserved by Ler<sup>d</sup> Hardwicke for the opinion of the  
 other judges, the argument on which will be found in a  
 subsequent part of this chapter. It is that of

“ [*The King ags<sup>t</sup>*] *Stephen Sutton*.

“ For having two iron stamps in his custody.”

At the Lincoln assizes, a singular trial was commenced before Lord Chief Justice Hardwicke, being that of an action which was brought by one clergyman against another, for disturbing him while in the performance of divine service. The case was, however, compromised ere it had proceeded very far.

At the assizes at Warwick, the last town on the circuit, which commenced on the 23rd of August, the following action was tried, the account of which is taken from Lord Hardwicke's notes:—

“ John Shuckburgh, Esq., plt.; Samuel Smith, def<sup>t</sup>.

“ Case for words spoke of plt., a justice of peace, to his servant, charging plaintiff with robbing on y<sup>e</sup> highway.

“ Pl.—Not Guilty.

“ *Sir T. Abney, pro quer.*

“ *Coventry Harlidge*. Plt. is a justice of peace. He has been serv<sup>t</sup> to plt. ab<sup>t</sup> 9 years, & on 25 March def<sup>t</sup>, as he believes, knew him to be plt.'s servant. Proves y<sup>e</sup> very words. Plt. followed him by his own door.

“ + *exam<sup>d</sup>*. Def<sup>t</sup> and he had some words before.

“ *Henry Taylor*. Knows def<sup>t</sup>. He knew Harlidge to be plt.'s servant. He told him so an hour before.

“ *Mr. Noel, pro def.* Improbable No damage. No aggravation by being a justice of the peace.

“ *Nicholas Northwell*. Was at Northampton last Lady Day.

“ Was at y<sup>e</sup> door when Coventry Harlidge went by.

“ Differed about y<sup>e</sup> goodness of a horse.

“ Smith s<sup>d</sup> he bought a horse of Coventry, w<sup>ch</sup> was Mr. Shuckburgh's. Fellow went back. Coventry went

by. Smith called after him, and said, ‘Dont you goe home and tell y<sup>e</sup> master y<sup>t</sup> you gave me any thing for luck. Your master’s an honest fellow.’

“Smith did not goe fro’ his door.

“Verd<sup>t</sup>, *pro quer*, da. 1<sup>l</sup> 1<sup>r</sup> 0.”

A trial of an ejectment case “on y<sup>e</sup> demise of Saunderson Miller, Esq.,” was the only cause of importance, and occupied a considerable time.

In a case of “trover for a casting net,” in which the parties were “W<sup>m</sup> Souch, pl<sup>t</sup>, Whing Canning, def<sup>t</sup>,” a juror was withdrawn, after the trial had commenced, and so the assizes terminated; and, with the last-mentioned trumpery case, Lord Chief Justice Hardwicke’s circuit career.

Lord Hardwicke continued to keep up pretty regularly his Latin correspondence with his sons at Hackney, and the letters on each side are still among his papers. In October, 1736, we find one addressed to Philip and Charles, which appears, however, to allude to an intermission in this mode of communication, owing to the numerous engagements of the Chief Justice. In this letter he exhorts Philip to set a good example, as the elder brother, to Charles; and Charles, as the younger, to follow the good example of Philip. The nature and use of the studies they were pursuing, he points out at length; and expatiates on the structure and beauty of the Greek language. Joseph and John, two other sons of Lord Hardwicke, were also sent to the same school with their elder brothers; and with them their father corresponded occasionally in the same manner.

On Tuesday, 7<sup>th</sup> December, there came on before Lord Hardwicke the trial of Robert Nixon, the nonjuror

clergyman, for being the author, printer, and publisher of a scandalous and insolent libel, dispersed in Westminster Hall on July the 14th, and of those of the like nature that were blown up with gunpowder, with the five acts of Parliament, on the same day. It was proved that he was the author; that the printed libel was composed from a copy in his own handwriting; that it was printed in his own room; that he gave out several of them to be dispersed in Westminster Hall; that he laid the parcel with gunpowder in it himself near the courts of Chancery and King's Bench. He made no defence, and was found guilty of the whole indictment. Sentence was deferred till next term.\* On the 10th of February subsequent, Mr. Nixon accordingly received the judgment of the Court of King's Bench for his misconduct. His sentence was as follows. He was ordered to make the tour of Westminster Hall, and to go into the four courts with a paper or parchment on his forehead, declaring his offence; to pay a fine of 200 marks; to suffer five years' imprisonment; and to find two sureties in £250 each, and himself to be bound in £500 for his good behaviour during life. The first part of his sentence was immediately performed by him, and he was remanded back to Newgate.

The following memorandum among Lord Hardwicke's papers is in the handwriting of Mr. Justice, afterwards Lord Chief Justice Lee, and relates to the disposal of the prisoner between the period of his trial and his receiving sentence for his offence.

“ Robert Nixon was admitted to bail, 28<sup>th</sup> Sep<sup>r</sup>, 1736, upon a habeas corpus by L<sup>d</sup> Hardwicke, himself in £1000 & 2 bail in £500, to appear in K<sup>s</sup> B. the 1<sup>st</sup> day of the next term to answ. etc. And in the meantime to be of

\* Note of the trial by Lord Hardwicke; Hardwicke MSS., Wimpole.

good behaviour towards our lord the King, and all his liege subjects." \*

Mr. Nixon, however, appears not to have been the only intruder into, and disturber of, the solemnities of Westminster Hall at this time. A visitor of a very different kind, from whose face the very judges were compelled to fly, and to effect a retreat in a manner not the most dignified, is described in the following paragraph from one of the public journals :—

"A question was carried in the House of Commons, for building a bridge over the Thames, from Palace Yard to the Surrey side. During the debate, that river overflowed its banks, by reason of a strong spring tide: the water was higher than ever known before, and rose above two feet in Westminster Hall, where the courts were sitting. The judges, &c. were obliged to be carried out."

Lord Chief Justice Hardwicke presided at Nisi Prius, during the London sittings after Michaelmas Term, 1736.

The case from Lord Hardwicke's note-books, which follows, is one of very considerable interest, and will well repay a perusal, both by the legal student and the general reader. The mode in which the evidence on the different matters of importance on each side is taken down, both from the examinations in chief and the cross-examinations, is worthy of notice. The arguments of counsel are also lucidly arranged and numbered. And, what is more valuable still, a copious note, embodying the principal points in Lord Hardwicke's charge to the jury in this case, has been made by him. The manner in which he here lays down the law relating to the question, is deserving of deep attention, and his observations may be made applicable in some important respects, not only to the precise case here decided,

\* Hardwicke MSS., Wimpole.

but also to many others in which the subjects of contract, conditions, and breaches of them, form the principal consideration, and which are of too technical a nature to be discussed here. The different leading points in this important case, which at two separate periods presented themselves to his Lordship's mind, and were noted down by him, after his accustomed manner, I have appended to the note of his charge.

To the general reader and historical student, the information detailed respecting the proceedings during the breaking out of the war with Spain, here alluded to, cannot fail to prove instructive and interesting.

“ *London Sitings after Michaelmas Term, 1736.*

“ *De'cris, 15<sup>o</sup>.*

“ Harry Spencer, plt.—Jacob Franco, def<sup>t</sup>.

“ Case on a policy of insurance on y<sup>e</sup> body of y<sup>e</sup> ship Prince Frederick, her tackle, apparel, & furniture, fro' first arrival at Vera Cruz, & fro' thence to London. Interest or no interest, free from average, & with<sup>t</sup> benefit of salvage to y<sup>e</sup> assurers.

“ Premium 30 guineas. Insur. 500*l*.

“ Ship taken & detained by divers subjects of y<sup>e</sup> King of Spain. This alleged as y<sup>e</sup> loss.

“ Pl.—Non ass.

“ *Serjt. Chapple, pro quer.* The loss laid diff<sup>t</sup> ways.

“ Sometimes laid as a taking by enemies.

“ 28 June, 1725, y<sup>e</sup> ship sailed fro' Gravesend for Vera Cruz.

“ 22 Decemb<sup>r</sup>, 1725, policy signed by def<sup>t</sup>. Sum insured £500.

“ *Wm. Adams.* Was Carpenter to y<sup>e</sup> ship Prince Frederick. She arrived at Vera Cruz in Oct. 1725.

“ 15, or 16, or 18 months after, y<sup>e</sup> Spanish officers took

away y<sup>e</sup> small arms—ab<sup>t</sup> 20 Spanish & soldiers, marines of y<sup>e</sup> garrison, came on board with an armed force and demand<sup>d</sup> their arms, & they not being deliv<sup>d</sup>, they seized y<sup>m</sup>.

“ 9 July, 1727, (being ab<sup>t</sup> 20 months after seizing y<sup>e</sup> arms,) ab<sup>t</sup> 30 soldiers came on board armed with musquets, & struck their English colours, & said they took pos<sup>s</sup>ion of her for y<sup>e</sup> King of Spain.

“ All y<sup>e</sup> sailors were made prisoners—allowed 2 Royals a day—led to prison—ab<sup>t</sup> Oct<sup>r</sup> or Nov<sup>r</sup> the Spaniards fitted her up for their own use—careened her, & made her fit for their service. The S. [South] Sea Company's arms were on y<sup>e</sup> stern, w<sup>ch</sup> they cut out—carved S<sup>t</sup> Philip, & called her by y<sup>t</sup> name. In Jan<sup>y</sup> 1727-8 sent with y<sup>e</sup> . . . squadron, & this ship was sent as commodore, manned with Spaniards, & with Spanish colours.

“ The Spaniards put her into y<sup>e</sup> form of one of their men-of-war—cut more port-holes in her side.

“ The Spaniards, who seized her, s<sup>d</sup> they came by y<sup>e</sup> Governor's positive orders.

“ *+eram*. The ship was restored afterw<sup>ds</sup>, 26 July 1728, y<sup>e</sup> S<sup>t</sup> Philip was rubbed out by y<sup>m</sup>—they brought her to England in Apr. 1730—sailed for Vera Cruz in Jan. 1729-30. W<sup>n</sup> she came to England, she was putt into y<sup>e</sup> Company's wett dock.

“ He was paid his wages for y<sup>e</sup> whole voyage, & believes y<sup>e</sup> rest of y<sup>e</sup> officers had. Y<sup>e</sup> men had their wages only. Y<sup>e</sup> cargo was taken out ab<sup>t</sup> 12 months before y<sup>e</sup> seizure.

“ *Col. Soley*. Was at Gibraltar in 1726 & 1727. Ab<sup>t</sup> 20 Jan. 1726 y<sup>e</sup> Spaniards formed a regular camp near y<sup>e</sup> town—ab<sup>t</sup> 11 Febr. 1726 y<sup>e</sup> Spaniards began to make a battery—consultation be<sup>m</sup> v<sup>e</sup> Governor & S<sup>r</sup> Chas.

Wager, & preparations made for defence—y<sup>e</sup> same day they fired upon y<sup>e</sup> Spaniards fro' y<sup>e</sup> works of y<sup>e</sup> town—y<sup>e</sup> night be<sup>tn</sup> y<sup>e</sup> 11<sup>th</sup> & 12<sup>th</sup> of Febr<sup>r</sup> y<sup>e</sup> Spaniards opened y<sup>e</sup> trenches before y<sup>e</sup> town—y<sup>e</sup> next morning S<sup>r</sup> Chas. Wager hoisted y<sup>e</sup> bloody flagg, & fired on y<sup>e</sup> Spanish battery. The siege contin till y<sup>e</sup> 11<sup>th</sup> June next, 1729, at night. Then letters came fro' Mons<sup>r</sup> Vandeman to L<sup>d</sup> P . . . & on 13 June 1729 y<sup>e</sup> Governor L<sup>d</sup> & y<sup>e</sup> Spanish General settled a cessation of arms. Y<sup>e</sup> Spaniards contin<sup>d</sup> in y<sup>e</sup> trenches till Sep<sup>r</sup>. He y<sup>n</sup> went to Madrid, & came back in Dec<sup>r</sup> & y<sup>e</sup> Spaniards were in y<sup>e</sup> trenches, & y<sup>e</sup> blockade continuing.

“ Y<sup>e</sup> Spaniards owned ab<sup>t</sup> 700 of their men killed in y<sup>e</sup> siege.

“ Knows of no formal declaration of war.

“ *Capt. Copythorne.* Was on board y<sup>e</sup> Betty, 18 June, 1727, O.S. coming fro' Messina—he was met by a Spaniard in y<sup>e</sup> Mediterranean, & attacked by her in a hostile manner. After 5 hours &  $\frac{1}{2}$  dispute he was blown up, & y<sup>e</sup> ship taken—sold, & was restored since.

“ *Mr. Prevcrean.* Proves y<sup>e</sup> King's instructions to S<sup>r</sup> Cha. Wager, 22<sup>d</sup> Dec. 1726.

“ *In case of a war decl<sup>d</sup>, Gibraltar attacked, or any o<sup>r</sup> hostility by y<sup>e</sup> Spaniards, you are to annoy y<sup>m</sup> by hostile mean<sup>s</sup>.*

“ *Mr. Atlix.* Was secretary to S<sup>r</sup> Cha. Wager, w<sup>n</sup> at Gibraltar, in 1726. Proves his orders to y<sup>e</sup> Captains of y<sup>e</sup> ships of war, to look on all ships or vessels belong<sup>g</sup> to y<sup>e</sup> Spaniards as enemies.

“ *Capt. Jacob.* Was Capt. of y<sup>e</sup> Royal Oak. Read those orders, took a Spanish [vessel] by virtue thereof.

“ Engaged a Spanish man-of-war of 44 [guns], when after a fight of  $\frac{3}{4}$  of an hour she struck.

“Contin<sup>d</sup> to act in this way till y<sup>e</sup> siege of Gibraltar was raised.

“Both these ships sold to y<sup>e</sup> Spaniards again.

“*Captain Wallis.* Book fro’ y<sup>e</sup> Adm<sup>ty</sup> 4 March, 1726-7. Orders to Adm<sup>l</sup> Haddock to order y<sup>e</sup> ships of his squadron to take, sink, burn, or otherwise destroy any Spanish ships they might meet with.

“21 March, 1726. Duke of Newcastle to S<sup>r</sup> Ch. Wager, ‘I need not repeat to you y<sup>t</sup> you sho<sup>d</sup> now treat y<sup>e</sup> Spaniards every where as enemies, and annoy y<sup>m</sup> wherever you can.’

“28 March, 1727. Order of Council for general letters of mark and reprisal. None such issued.

“4 Apr<sup>y</sup>, 1727. Duke of N. to S<sup>r</sup> Cha. Wager—y<sup>t</sup> y<sup>e</sup> p<sup>’</sup>duce of y<sup>e</sup> prizes sho<sup>d</sup> belong to y<sup>e</sup> capt<sup>ns</sup>.

*Serj<sup>t</sup> Parker, pro def.*

“1. Y<sup>e</sup> words of y<sup>e</sup> policy are *free fro’ average*, so y<sup>t</sup> no breach unless a total loss.

“2. No breach w<sup>n</sup> taken as a capture by enemies, or a detention by ano<sup>r</sup> occasion.

“1. No actual war. *There can be no public war with<sup>t</sup> a declaration of war and hostilities.*

“Cessation of hostilities ended it.

“2. Supp. not, y<sup>n</sup> whether this such a capture as was a loss, or a determination of y<sup>e</sup> voyage.

“—within y<sup>e</sup> words—*arrest—restraint—or detention.*

“That was a final detention.

“*Hughes v. Cowling*, Raym. 473. Ship taken in time of peace, 3 Keb. 397. No p<sup>’</sup>erty altered till condemnation. Condemnation necessary. Grotius de J. P. & B., Owen, 45.

“*Serj<sup>t</sup> Wynne.* Y<sup>e</sup> p<sup>’</sup>erty was *revested by y<sup>r</sup> restitution.*

“ *Mr. Prevereau.* Pr’duces y<sup>e</sup> prelim. art<sup>s</sup>, dated 31 May, 1727, N. S., signed by y<sup>e</sup> Baron de . . . & Mr. Walpole.

“ 13 June, 1727, N.S. Y<sup>e</sup> same articles signed by y<sup>e</sup> Duke de Bournonville, y<sup>e</sup> Spanish minister at Vienna.

“ Y<sup>t</sup> all privileges of commerce shall remain.

“ Immediately after y<sup>e</sup> signing y<sup>e</sup> articles all hostilities shall cease, & with respect to His Cath. Majesty within 8 days after his Cath. Maj<sup>ty</sup> shall have rece<sup>d</sup> these signed articles.

“ 12 articles. Ratification to be exchange<sup>d</sup> within 2 months after.

“ *Mr. Popple.* Can’t remember y<sup>e</sup> day w<sup>n</sup> y<sup>e</sup> preliminaries were sent particularly. 21 June, N. S. y<sup>e</sup> orig<sup>l</sup> articles were sent to Madrid after signing by y<sup>e</sup> Duke de Bournonville. Y<sup>e</sup> usual time of messengers going fro’ Paris to Madrid ab<sup>t</sup> 7 or 8 days—y<sup>e</sup> time to commence fro’ y<sup>e</sup> end of 8 days after receiving y<sup>m</sup>, i. e. 6 July, N. S.

“ *Capt<sup>m</sup> Cockayne.* On the 11 June, 1727, at night, y<sup>e</sup> cessation of arms commenced, & all firing ceased fro’ y<sup>t</sup> time. A messenger came fro’ y<sup>e</sup> Spanish general to y<sup>e</sup> governour.

“ Difficult to determine w<sup>n</sup> y<sup>e</sup> siege actually ceased.

“ *Mr. Allix.* 16 June, 1727, O. S. Sir Cha. Wager was cruising off Cales. Rec<sup>d</sup> a copy of y<sup>e</sup> preliminary art<sup>s</sup> fro’ Monsieur Vandeman. 17 June, S<sup>r</sup> Cha. gave gen<sup>l</sup> orders to cease hostilities at sea.

“ 6 March, 1728, N. S. Art. of y<sup>e</sup> peace.

“ The King of Spain agrees to send his orders forthwith to restore y<sup>e</sup> ship Prince Frederick.

“ *Mr. Murray.* No such war as co<sup>d</sup> give either side a right of acquiring p<sup>p</sup>ty. *Jus capiendi* & not *jus acquirendi*.

“ *Reply.* 18 June, 1727, O. S. Duke of Newcastle’s

letter to S<sup>r</sup> Cha. Wager. That y<sup>e</sup> King of Spain has submitted all matters relating to y<sup>e</sup> raising y<sup>e</sup> siege of Gibraltar to y<sup>e</sup> French, & . . . as to y<sup>e</sup> restoring y<sup>e</sup> Prince Frederick has refused this, particularly expressed in y<sup>e</sup> prel<sup>y</sup> . . . if y<sup>e</sup> Spaniards didn't . . . to stay y<sup>e</sup>.

“ Nov<sup>r</sup> 18, 1727, to S<sup>r</sup> Cha. Wager to y<sup>e</sup> like effect.

“ *Serj<sup>t</sup> Chapple*. 2 Salk. 444. Stopping of a ship to make a fireship of her, within y<sup>e</sup> word *detention*.

“ Y<sup>e</sup> first act done y<sup>e</sup> beginning of April, 1727, by taking y<sup>e</sup> arms.

“ [Insurance on y<sup>e</sup> ship.]

“ If this ship had been insured upon an interest, it w<sup>d</sup> be a partial loss, and there must have been an average.

“ Verdt<sup>t</sup>, *pro def.*”

“ In my direction to y<sup>e</sup> jury in this cause, I declar'd my op<sup>n</sup> y<sup>t</sup> there was a plain evidence of a war made & carried on betw. y<sup>e</sup> Crown of Spain & y<sup>t</sup> of G<sup>t</sup> Britain, by y<sup>e</sup> siege of Gibraltar, &c., during w<sup>ch</sup> war y<sup>e</sup> King of Sp. & his subjects were enemies of y<sup>e</sup> King of Gr. Br. & his subjects; for y<sup>t</sup> a war might commence betw. princes and nations as well by open hostilities committed, as by a solemn declaration, and so is Hale's Hist. Pla. Cor.

“ But y<sup>t</sup> a war so begun might end by a cessation of those hostilities, as well as by a solemn treaty of peace. That consequently, if they believed on y<sup>e</sup> evidence, y<sup>t</sup> y<sup>e</sup> taking or detention of y<sup>e</sup> ship was during y<sup>e</sup> continuance of y<sup>e</sup> war, y<sup>m</sup> y<sup>e</sup> question w<sup>d</sup> arise whether such a capture or detention in a war so begun, y<sup>e</sup> ship being peaceably in y<sup>e</sup> port before, & no condemnation follow<sup>d</sup>, but, in fact, a restitution had, work'd any alteration of y<sup>e</sup> property of y<sup>e</sup> ship, in order to y<sup>e</sup> determ<sup>n</sup> of w<sup>ch</sup> I directed y<sup>m</sup> in that case to find a special verdict.

“ But if they believed upon y<sup>e</sup> evidence, y<sup>t</sup> y<sup>e</sup> taking or detention was after y<sup>e</sup> war actually ceased, then there could not possibly be any alteration of y<sup>e</sup> p<sup>r</sup>perty of y<sup>e</sup> ship; but in y<sup>t</sup> case they must consider whether this was such a *restraint or detention of y<sup>e</sup> ship by a king, prince, or people* (other accidents mentioned in y<sup>e</sup> policy), as was a breach of this insurance, & w<sup>d</sup> render y<sup>e</sup> def<sup>t</sup> liable to answer y<sup>e</sup> sum insured. This I told y<sup>m</sup> depended on y<sup>e</sup> words of y<sup>e</sup> contract, & y<sup>e</sup> intent of y<sup>e</sup> p<sup>r</sup>ties thereto. That if this had been an insurance made upon an interest, it seemed plain y<sup>t</sup> y<sup>e</sup> insurer sh<sup>d</sup> have answered for this *restraint or detention*, as a damage or partial loss, *pro rata* in proportion to y<sup>e</sup> *quantum* of such damnification, & of y<sup>e</sup> sum insured. But w<sup>r</sup> he ought to answer for it upon a policy made as this was, *interest or no interest, free fro’ steerage, & with<sup>t</sup> benefit of salvage to y<sup>e</sup> assurer*, & to pay y<sup>e</sup> whole sum insured, tho’ y<sup>e</sup> ship was restored entire, & returned home safe, depended on y<sup>e</sup> usage of account<sup>ts</sup>, & y<sup>e</sup> general intention & sense of parties entering into contracts of this kind; for y<sup>t</sup> this being a mercantile contract, expressed short, & with some clauses left standing in y<sup>e</sup> printed part of y<sup>e</sup> policy plainly inconsistent with y<sup>e</sup> intent of this partic<sup>r</sup> agreement, it must be construed & explained by usage, & y<sup>e</sup> general understanding & practice of merch<sup>ts</sup> upon such kind of contracts, this being y<sup>e</sup> matter to w<sup>ch</sup> y<sup>e</sup> parties must be intended to have obliged themselves, & of this it was proper for y<sup>e</sup> jury, which consisted of eminent merch<sup>ts</sup>, to consider. Therefore, if, after duely weighing these considerations, they believed upon y<sup>e</sup> evidence y<sup>t</sup> this was such a *restraint or detention* of y<sup>e</sup> ship, for w<sup>ch</sup>, upon a policy so framed, y<sup>e</sup> def<sup>t</sup>, according to y<sup>e</sup> usage & practice of merch<sup>ts</sup>, was to answer, & to pay y<sup>e</sup> sum insured, then I

directed them to find for y<sup>e</sup> plt., & give him y<sup>e</sup> whole £500 in damages, making y<sup>e</sup> usual deduction of £10 per cent. But if, after duely weighing these considerations, they believed upon y<sup>e</sup> evidence y<sup>t</sup> this was not such a *restraint or detention*, for w<sup>ch</sup>, upon a policy so framed, y<sup>e</sup> def<sup>t</sup>, acc. to y<sup>e</sup> usage & practice of merch<sup>ts</sup>, was to answer and to pay y<sup>e</sup> sum insured, in y<sup>t</sup> case I directed y<sup>m</sup> to find for y<sup>e</sup> def<sup>t</sup>, w<sup>ch</sup>, after going fro' y<sup>e</sup> bar and staying ab<sup>t</sup> half an hour, they did.—Vide y<sup>e</sup> case of *De Paiba v. Ludlow*, Trin. 5, Geo. I., C.B., L<sup>d</sup> King's MS. 182.

The following note by Lord Hardwicke refers to the above trial :—

“ On this policy either a total loss or alteration of y<sup>e</sup> p<sup>'</sup>perty.

“ 1. Whether a war.

“ 2. Whether that war was contin<sup>g</sup> at y<sup>e</sup> time of y<sup>e</sup> seizure, or ceased.

“ 3. If contin<sup>g</sup>, wh<sup>er</sup> any alteration of y<sup>e</sup> p<sup>'</sup>perty by y<sup>e</sup> detention ; or, as no condemnat<sup>n</sup>, & y<sup>e</sup> Spaniards have given her up, w<sup>r</sup> y<sup>t</sup> is not an admission y<sup>t</sup> it was not altered.

“ 4. If war not continuing, y<sup>n</sup> what kind of detention this was.

“ Only temporary, & y<sup>e</sup> ship rest<sup>d</sup> & y<sup>n</sup> no loss.”

The above was afterwards crossed out, and the following substituted for it.

“ 1. Whether taken during y<sup>e</sup> war.

W<sup>r</sup> such a capture as c<sup>d</sup> alter y<sup>e</sup> p<sup>'</sup>perty.

2. Whether taken after peace renewed.

Then not by enemies.

Whether such a detention by Kings, or Prince, or People as makes a breach of y<sup>e</sup> policy.

Temporary only, & y<sup>n</sup> ship rest<sup>d</sup>

But it wd be a partial loss upon a policy made upon interest."

The elegantly penned letter which follows, was addressed by Lord Hardwicke to the Prime Minister, on behalf of a Clergyman of great worth and learning, of whose promotion to higher offices through the instrumentality of Lord Hardwicke, we shall hereafter hear more. The subject of the application, the Rev. Dr. Pearce, had formerly gained the notice of Lord Macclesfield when Chief Justice, by dedicating to him his edition of "*Cicero de Oratore*," soon after which he obtained, on that nobleman's recommendation, a fellowship at Trinity College, Cambridge. When Lord Macclesfield was made Chancellor, Dr. Pearce became his chaplain. He was afterwards presented to the Rectory of St. Martin's-in-the-Fields, and made one of the Royal Chaplains. It was probably through his connection with Lord Macclesfield, that Lord Hardwicke became acquainted with Dr. Pearce, and the friends of his former patron he through life steadily befriended. Queen Caroline's activity in promoting men of talent and desert, especially in Dr. Pearce's profession, is well known; and some of the most distinguished divines of that period owed their advancement to Her Majesty's discernment, and zeal in their behalf. Lord Hardwicke's interest in this matter, in conjunction with the Queen, is evinced both by the conversation recorded in the letter, and the petition which the writer makes to the minister.

*"Carshalton, Jan. 1, 1737.\**

"SIR,—I just now received a letter from Dr Pearce, to acquaint me that the Deanery of Wells is likely soon to be vacant, from the ill state of the Bishop of Llandaff's

\* Hardwicke MSS., Wimpole.

health. He desires me to put you in mind of him, & what has lately passed relating to his case, as well as to add my own intercession with you on his behalf. Considering that I had some hand in his disappointment, I cannot refuse him this ; & indeed, I much wish that he may receive an equivalent from your hands. I must also, in justice, add further, that the last time I had the honour & happiness of attending the Queen, Her Majesty was pleased to tell me that she intended to procure for this gentleman the first Deanery that fell.

“The day puts me in mind of expressing those wishes which I never fail to have sincerely at heart ; I mean of all imaginable prosperity & health to yourself, thro’ a long series of happy years. I will not dissemble that in this I have some self-interest, being always, with the greatest truth & respect,

“ Sir,

“ Your most obedient & most faithful humble serv<sup>t</sup>,  
“ HARDWICKE.”

“ Sir Rob<sup>t</sup> Walpole.”

The trial which follows is one of considerable interest and importance ; and is deserving of perusal. It is taken from Lord Hardwicke’s notes.

“ *London, 1737.*

“ *Hill. Term, 16<sup>th</sup> of K. Geo. 2<sup>nd</sup> Feb.*

“ Robert Nelson, jeweller, diamond cutter, & polisher of diamonds, plt.

“ Sir Wolstan Dixie, Bart., def<sup>t</sup>.

“ Case, for scandalous words, with special damage, & causing plt’s. house to be searched for stolen goods with p<sup>b</sup>able cause. 3 charges.

“ Pl.—Not Guilty.

“ *Serj<sup>t</sup> Eyre, pro quer.*

“ *Mrs. Nelson.* 29<sup>th</sup> Nov<sup>r</sup>. 1735. Def<sup>t</sup> & some others rushed into her chamber in y<sup>e</sup> house of her brother y<sup>e</sup> p<sup>lt</sup>. Def<sup>t</sup> said where is that rogue your master, that cursed old thief, with Betty Barker ; he has robbed me of 1600*l.*, & I will hang them both, by God ; damn me if I don’t, if it cost me 10,000*l.*

“ Told her he had got a warrant to search for goods y<sup>t</sup> were stolen fro’ him, & her bro<sup>r</sup> had got, tho’ he knew y<sup>m</sup> to be stolen from him.

“ Don’t know that her bro<sup>r</sup> had any acquaintance with def<sup>t</sup>— never saw y<sup>m</sup> together.

“ Def<sup>t</sup> & appr. & 2 p’sons y<sup>t</sup> came with def<sup>t</sup> were together in her room, w<sup>n</sup> y<sup>e</sup> words were spoken, & staid all y<sup>e</sup> time. Y<sup>e</sup> apprentice writ y<sup>m</sup> down at 3 or 4 days end, by her brother’s direction.

“ She told Mr. Strut, p<sup>lt</sup>’s attorney, those words at first.

“ *W<sup>m</sup> Reith.* 29 Nov. 1735. Somebody rung at y<sup>e</sup> gate—y<sup>e</sup> maid went up to open y<sup>e</sup> door ; he saw 3 p’sons run up stairs into his mistress’s bed-chamber ; he went in after y<sup>m</sup>, & Sir Wolstan laid hold of him by y<sup>e</sup> collar, & spoke y<sup>e</sup> words sworn to by Mrs. Nelson.

“ *Mr. Dolly* (y<sup>e</sup> constable). Proves S<sup>r</sup> W<sup>m</sup> Billers’s warr<sup>t</sup> given into his hands in y<sup>e</sup> p’sence of S<sup>r</sup> Wolstan Dixie, and he desired him to execute it.

“ He went with S<sup>r</sup> Wolstan Dixie, and searched all y<sup>e</sup> rooms in y<sup>e</sup> house, y<sup>e</sup> sister or y<sup>e</sup> serv<sup>ts</sup> opened all y<sup>e</sup> chests and boxes for y<sup>m</sup>. Did not find any of y<sup>e</sup> goods there.

“ *Mr. Hardham.* Y<sup>e</sup> matter made a great noise at Studeley’s Coffee-house, where jewellers resort for their dealings.

“ *Serj<sup>t</sup> Skinner, pro def.* 1. Words. 2. Search.

“ [1. As to y<sup>e</sup> words.]

“ . . . *Dolly* (y<sup>e</sup> constable). There were several words spoke, but y<sup>e</sup> particulars he can't remember. Can't tell y<sup>e</sup> nature of y<sup>e</sup> words. Can't say wh<sup>r</sup> he spoke y<sup>e</sup> words mentioned.

“ Did not see def<sup>t</sup> take Reith by y<sup>e</sup> collar.

*Mr. Smith.* Knows Mrs. Barker. In Nov<sup>r</sup>, 1735, she sent a large p<sup>r</sup>cell of boxes to his house. She came to his house with Mr. Nelson's sister, and took a box or trunk to Nelson's house; they said he told S<sup>r</sup> Wolstan of it w<sup>n</sup> he searched his house—Nelson before he went into y<sup>e</sup> country said S<sup>r</sup> Wolstan was a rogue, and abused him.

“ *Mrs. Smith.* Y<sup>e</sup> same as her husband.

“ Y<sup>e</sup> portmanteau was full of linen and clothes—she told def<sup>t</sup> of it—her house was searched before y<sup>e</sup> plt's house was searched.

“ *Serj<sup>t</sup> Eyre.* Repl.: Nothing objected to y<sup>e</sup> credit of our witnesses.

“ Verdt<sup>t</sup>, *pro quer.* Da. *pro verbis*, 5<sup>l</sup>.

“ For entering, search<sup>s</sup>, &c., 100.”

One of the journals of the time furnishes us with some further information respecting the legal adventures of Sir Wolstan Dixie, and also as to the issue of the proceedings taken by him against the unfortunate “ *Betty Barker*,” who it appears managed to clear herself of the charges brought against her by the baronet, and endeavoured to retaliate on her ungallant prosecutor.

“ Came on a trial before Lord Chief Justice Hardwicke, on an action brought by Mrs. Elizabeth Barker, against Sir Woolstan Dixie, Bart., for £5000, for false imprisonment, and a charge of robbery, for which she was tried at the Old Bailey, and acquitted. After a hearing of about seven hours, the jury, which was a special one, brought a verdict of 5s. for the plaintiff; upon which his Lordship sent them out again, but in about half an hour they returned, without altering their verdict.”

The notes of this trial occupy a considerable space in Lord Hardwicke's book ; but there is nothing of particular interest or importance deserving of being extracted, except the circumstance of the celebrated Paul Whitehead appearing as a witness, and stating that he had attended, out of curiosity, Mrs. Barker's trial for the felony, at Hicks Hall, when she was acquitted ; and that he heard Sir W. Dixie say to one of the witnesses, in a sentence the commencement of which was adorned with epithets a good deal more vigorous than select, " don't sew up your mouth, but swear boldly." Mr. Whitehead also mentioned that " plaintiff lay in Newgate 16 days—he saw her there several days—she was in a very bad condition of health—eat nothing—she was amongst y<sup>e</sup> common herd."

The following report of an application to the Court of King's Bench, prior to this trial, is from Cases temp. Hardwicke.

" *Barker v. Sir Woolston Dixie, Bart.*

" In an action for a malicious prosecution, the defendant was willing his wife should be examined : (the plaintiff's wife I suppose).

" *Lord Hardwicke.* The reason why the law will not suffer a wife to be a witness for or against her husband, is to preserve the peace of families ; and therefore I shall never encourage such a consent :—and she was not examined."

The wife in question it would, however, appear, was not that of the plaintiff, as supposed by the learned reporter, and who was a widow, but that of the defendant, Sir W. Dixie, whose career of litigation with Mrs. Barker was not suffered to terminate here.

In the term after the trial, we find Mr. Strange moving the Court of King's Bench for a new trial, because the damages given on the above were too small. Lord Chief Justice Hardwicke declared his opinion that there

ought to be no new trial, in which the other judges concurred.

The case of *Nelson v. Sir Wolstan Dixie, Bart.*, was afterwards brought before the Court of King's Bench, when it was contended that there was a material variation between the words set forth in the declaration as used by the defendant, and those proved at the trial to have been spoken. In the former, the conclusion of the worthy baronet's denunciation was stated to be, "I will hang *him*." At the trial, the baronet's thirst for blood was made to appear even more appalling, as the words then asserted to have been uttered by him were, "I will hang *them both*," thus including beneath the gibbet here supposed, both the diamond cutter and the fair Betty Barker, who had been so uncharitably suspected of gratifying her vanity, by decorating her person with the Dixie diamonds.

The question, therefore, now to be determined by the learned judges was, whether this was a material variance or not? The opinion of the Court was delivered by

*Lord Hardwicke*.\* "It is, and the words laid are not proved. Where the very words are laid, those words must be proved as laid, though the rules are not now so strict as formerly; for if there should be a variation in the order of the words, as proved to be spoken, from what is laid in the declaration, so it be agreeable in substance it is sufficient."

Parliament having met, the speech from the throne,—which, from the alterations in his handwriting in the draught of it, appears to have been settled by Lord Hardwicke,—noticed the late disturbances, but without any specific mention of the tumult at Edinburgh. It was answered by loyal addresses from both houses, expressing their abhorrence of such outrages, and their resolution

\* Cases temp. Hardwicke.

to support the Royal authority in suppressing riotous and seditious attempts, which threatened the very being of the constitution.

On the 10th of February, 1737, there was a grand debate in the House of Lords, on the subject of taking into consideration His Majesty's Speech.

Lord Carteret opened the debate. He thought the origin of the riots should be inquired into, and a remedy provided. The civil law he considered sufficient to quell the disturbances respecting the turnpikes, without calling in the aid of the military. The latter riots had their origin in some oppression which the people had suffered. The only proper way to quiet them, was to remove the injustice. He thought the riots in Spital-fields purely accidental. The ridiculous affair in Westminster Hall was an insult to the government of the country, and none but madmen could have a hand in it. He then continued :—

“ If we consider the place where, and the person before whom, this ridiculous insult was committed, we must conclude that no man in his right senses would have been guilty of it, or would have so much as thought of any such impudent and foolish contrivance ; for the noble lord who presided in that court has, I am sure, gained the affection and esteem of every man in the kingdom. He is a magistrate of great power ; but, my lords, great as it is, his authority is equal to his power ; for power and authority we must always look on as two different things of a very different nature ; power the legislature may give, but authority it can give to no man. Authority may be acquired by wisdom, by prudence, by good conduct, and a virtuous behaviour, but it can be grafted by no king, by no potentate upon earth. A man's power depends upon the post or station he is in, but his authority can depend upon nothing but the character he acquires among mankind ; and the more power a fool or knave is vested with, the more he will be despised, the more generally will he be loaded with hatred and reproach.”

The smuggling riots, he said, were become of ordinary occurrence, but the causes of them should be inquired

into. The late riot and murder at Edinburgh originated in smuggling, and the execution of a smuggler was the cause of the disorder ; but this affair was one particularly calling for investigation, and the perpetrators should be sought out and brought to justice. The present administration had but little authority. Some methods should be taken for gaining to it the esteem of the people. If troops became necessary for executing the laws, we should be ruled, not by civil, but by military government.

The Duke of Newcastle spoke next, but no account of his speech is preserved.

Lord Hardwicke then addressed the House, and during his speech observed as follows :—

“ As for the real causes of the several tumults that have happened, they will best appear when we come to examine into them ; but, my Lords, I am already very apt to believe that all the tumults that have lately happened, proceed from one and the same cause ; I believe they proceed from a want of power in the civil magistrate to prevent or punish, and a too great liberty in others to mislead the people, and to stir them up to riot and disorder. The people, it is true, seldom grow mutinous, but when they are or think they are oppressed ; but as the people are always jealous of those in power, and mighty apt to believe every piece of scandal or reproach that is thrown upon them, it is very easy for those who are prompted by their malice or revenge, to make the people believe they are oppressed, when there is not the least ground for any such insinuations ; and while the civil magistrate has not a sufficient power to put a stop to such insinuations, or to punish the fomenters of sedition, it will be impossible to prevent riots, especially if the people should imagine, or be made to believe, that he

has not a power to punish them for any such riots. This I take to be the principal cause of all our late tumults ; this I believe will plainly appear upon a general inquiry.

“ As to that affair in Westminster Hall, I am sorry, my Lords, to hear it so slightly passed over ; your lordships may call it a riot, tumult, insult, or what you please ; but it was certainly one of the most audacious affronts that was ever offered to an established government ; and could not, I am sure, proceed from any oppression, unless the acts of the whole legislative power of the kingdom are to be called oppression. The other riots seemed to point only at private men, but that riot, or insult, was levelled directly against the government ; nay, not only against the government, but against our present happy establishment. I do not mean my Lords the powder or rockets then blown up ; for I do not believe the persons guilty, call them madmen or what you will, had a design to blow up the Hall, or to hurt any person that was in it ; but I mean the scandalous and seditious libels spread about in the Hall by the explosion, and afterwards dispersed through every part of this great city. Those libels not only reflected in the most scandalous manner upon several Acts of Parliament, but by insinuation denied His Majesty’s right to the crown, and in some manner asserted the right of the Pretender. What might have been the aim of the authors of this insult, or whether they had any aim, I shall not now inquire ; but it is certain, if they had not been discovered, and as severely punished as the lenity of our laws, and the mercifulness of our present government would admit of, their insult would at least have answered this end, that it would have given people a mean opinion of our government, and might have given rise to seditious attempts of a much more dangerous nature.

“ In those tumults which happened in the west about turnpikes, it became necessary to employ a military force, in order to preserve the life of a magistrate who was threatened by the mob, for no other reason but because he had been diligent in putting the laws in execution. In another corner of the same county (Cornwall), a fellow took it in his head to keep possession of another man’s estate, by violence, and in spite of the laws of the kingdom. For this purpose, he provided himself with several confederates as wicked and as foolish as himself, and with proper arms for opposing all the power he thought could be sent against him. The Sheriff of the county, assisted by the county, went to execute the King’s writ against him ; but, instead of submitting, he fired upon them, killed some of the Sheriff’s assistants, and obliged them to retire. Was it not then proper, was it not necessary to call the King’s troops to the assistance of the Sheriff ? They were called, and without the spilling of any more innocent blood, the laws were put in execution, the owner got possession of his estate, and the criminal who dared to oppose the law was hanged.

“ These few examples show that a military force becomes, sometimes, absolutely necessary for putting the laws in execution ; and, if it were not for the few regular troops we have, riots would be more frequent than they are, and much more dangerous, as will, I believe, appear by a general inquiry into the riots that have lately happened ; therefore, I shall heartily agree in any motion tending to the bringing on of such inquiry.”\*

At the conclusion of the debate, it was resolved that the magistrates and officers of the City of Edinburgh, be ordered to attend that House ; and that an account of Capt. Porteous’s murder be laid before it.

\* Hansard ; Parl. Hist.

Mr. Hallam, in his Constitutional History of England, speaking of the restraints upon personal liberty which have been introduced from time to time, and have, in general, excited but little regard as they have passed through the houses of parliament, says, that the provisions in our fiscal code “ have sometimes gone so far as to give alarm to not very susceptible minds, may be shown from a remarkable debate in the year 1737. A bill having been brought in by the ministers to prevent smuggling, which contained some unusual clauses, it was strongly opposed, among other peers, by Lord Chancellor Talbot—himself, of course, in the cabinet—and by Lord Hardwicke, then Chief Justice, a regularly bred Crown lawyer, and in his whole life disposed to hold very high the authority of government. They objected to a clause subjecting any three persons, travelling with arms, to the penalty of transportation, on proof by two witnesses that their intention was to assist in the clandestine landing or carrying away prohibited or uncustomed goods. ‘ We have in our laws,’ said one of the opposing lords, ‘ no such thing as a crime by implication ; nor can a malicious intention ever be proved by witnesses. Facts only are admitted to be proved, and from those facts the judge and jury are to determine with what intention they were committed ; but no judge or jury can ever, by our laws, suppose, much less determine, that an action, in itself innocent or indifferent, was attended with a criminal and malicious intention. Another security for our liberties is, that no subject can be imprisoned, unless some felonious and high crime be sworn against him. This, with respect to private men, is the very foundation stone of all our liberties ; and if we remove it, if we but knock off a corner, we may probably overturn the whole fabric. A third guard for

our liberties is, that right which every subject has, not only to provide himself with arms proper for his defence, but to accustom himself to the use of those arms, and to travel with them whenever he has a mind.' But the clause in question, it was contended, was repugnant to all the maxims of free government. No presumption of a crime could be drawn from the mere wearing of arms, an act not only innocent, but highly commendable; and therefore, the admitting of witnesses to prove that any of these men were armed, in order to assist in smuggling, would be the admitting of witnesses to prove an intention, which was inconsistent with the whole tenor of our laws. They objected to another provision, subjecting a party against whom information should be given, that he intended to assist in smuggling, to imprisonment without bail, though the offence itself were in its nature bailable; to another, which made informations for assault upon officers of the revenue, triable in any county of England; and to a yet more startling protection thrown round the same favoured class, that the magistrates should be bound to admit them to bail, on charges of killing or wounding any one in the execution of their duty. The bill itself was carried by no great majority; and the provisions subsist at this day, or perhaps have received a further extension."

One of the journals of the day, of Feb. 12th, mentions:—

"Yesterday the Right Hon. the Lord Chief Justice Hardwicke attended the House of Peers, and the Right Hon. Sir Joseph Jekyll, Knt., Master of the Rolls, the Court of Chancery, in the room of the Right Hon. the Lord High Chancellor, who is very ill at his house in Lincoln's Inn Fields."

The cases which were argued and decided before Lord Chief Justice Hardwicke, and the other judges of the

Queen's Bench, while sitting in banc, have been briefly reported by the former's friend, Sir John Strange.

The same comprehensive manner of treating the subject, and the same analyzation and division of the argument into different branches, observable in his speeches while at the bar, are seen in Lord Hardwicke's judgments.

In 2 Strange, p. 1043, a very full report of his Lordship's judgment in *Middleton and Wife* against *Croft* is given, in which he laid down, with great learning and ability, the law relating to the jurisdiction of the spiritual court as to cases of marriage. Some additional interest is given to this decision, by the circumstance of Lord Hardwicke having some years afterwards, framed and introduced the famous act which is still in force, for the prevention of clandestine marriages. A copy of the above judgment, corrected by Lord Chief Justice Hardwicke, is among his papers; as is also the "resolution of the court" in the case of *The King* against *Burridge*, which, from a note indorsed on it in Lord Hardwicke's handwriting, appears to be "printed verbatim in 2nd Williams."

In the case of *The King* against *Bray*, the law was declared by Lord Hardwicke with great perspicuity and clearness, as to where a witness should be allowed to give testimony in a cause, though interested in its termination, and in what cases the evidence of such a witness should be rejected altogether. This judgment, as printed in Cases temp. Hardwicke, appears to contain more fully than most of the other reports do, the precise words made use of by Lord Hardwicke on the occasion, and bears a close similarity to those which are known to be correct reports of what he said.

Lord Hardwicke thus concluded his judgment:—

"For my own part, whenever an objection of this sort is made at

Nisi Prius before me, I am always inclined to restrain it to the credit rather than the competency of the witness, unless it is like to introduce great perjury, because it tends to let in light to the cause, and there may be still an objection made to his competency."

The principle here maintained, has been since largely carried out in several measures relating to the administration of justice, which have been enacted by the legislature and sanctioned by the judges; and from which, as in many other instances, Lord Hardwicke is shown to have seen far beyond the age in which he lived.

The case reported in Strange of *The King* against *Sutton*, was one which arose out of an indictment which, as we have seen, was tried before Lord Hardwicke while on the Midland circuit, at the assizes at Northampton. The defendant, Sutton, was convicted at these assizes for unlawfully having in his custody and possession two iron stamps, with intent to impress the sceptres on sixpences, and to colour and pass them off for half guineas. And Lord Hardwicke, who tried him, having, with the diffidence in his own judgment characteristic of a great mind, some doubt whether the bare having them in his custody without showing he used them, or did some act to procure them, was indictable, directed a certiorari to be brought. When the case was before the Court of King's Bench, Lord Hardwicke observed—\*

"I doubted whether it was not high treason, within the stat. 8 & 9 W. 3, c. 25, but it is not at all clear it would be so, because this is only to stamp part of one side of the coin, viz. putting sceptres. Then it is a misdemeanour at common law, and it did not occur to me that having in one's custody with an intent, without any overt act done, was a misdemeanour. As to the second part, I doubted whether any precedent could be found to show that the bare having counterfeit money in one's possession, with intention to utter it, without uttering it, was an offence."

\* Cases temp. Hardwicke.

After the case had been twice argued, the court was of opinion that the prisoner was properly convicted; for coining was the prerogative of the crown at common law: that this could not be a casual having them innocently, or coming to him as executor, because it was laid and found that he had them with an intent to impress.

“The court gave judgment, that the defendant do stand in the pillory at Charing Cross; and in consideration of his poverty and long imprisonment hitherto, that he do pay a fine of 6s. 8d. and be imprisoned for six months.”\*

There are a number of notes, and drafts of judgments delivered by Lord Hardwicke while he was Chief Justice of England, among the Hardwicke MSS.; but in general they are only of strictly professional interest, and unsuitable for quotation here, though of great value as correct records of what he propounded.

The illness of Lord Chancellor Talbot at this period, has been mentioned in a former page, during which Lord Hardwicke presided for him as Speaker in the House of Lords. But the public were not prepared for the following announcement, which appeared in one of the public journals of the 15th of February, and by which they were at once, to a large extent, both surprised and grieved.

“Yesterday morning, between 5 & 6 o'clock, died, at his house in Lincoln's Inn Fields, the Right Hon. Charles, Lord Talbot, Lord High Chancellor of Great Britain. His virtues in *private life* make his loss universally regretted; and his justice, penetration, wisdom, sweetness of temper, and unbiassed integrity, in every action of his *publick life*, will cause his death to be long considered by all mankind as a publick calamity.”

He died, after an illness of only five days, at the age of 53.

\* Cases temp. Hardwicke.

The death of the Lord Chief Justice Reeve, took place on the 19th of January. He was succeeded in the Common Pleas, by Willes the Attorney-General. Mr. Dudley Ryder was made Attorney, and Lord Hardwicke's friend, Strange, Solicitor-General.

The following rumour is mentioned in a journal of this period:—

“ It is said with some confidence that the Right Hon. the Lord Chief Justice Hardwicke will be appointed Lord High Chancellor of Great Britain ; Mr. Lee, one of the judges of the King's Bench, Lord Chief Justice, and Dudley Ryder, Esq., His Majesty's Attorney-General, one of the judges of the said court.”

In the meantime Lord Chief Justice Hardwicke was made Speaker of the House of Lords, until a Lord High Chancellor should be appointed.

The career of Lord Hardwicke as Lord Chief Justice of England, which office he had filled for more than three years with pre-eminent ability and distinguished success, is fast drawing towards its close ; his promotion to a more advanced position having at this period been determined on, if his own consent could be obtained. Lord Thurlow was of opinion that Lord Hardwicke shone even more as Chief Justice than as Chancellor, though this may be in some measure owing to the inefficient manner in which his judgments in the latter capacity are reported. Those delivered by him while Chief Justice, were published by his friend Mr. Strange ; and,—as we are told by Lord Hardwicke himself, was the case when he was at the bar,—it is probable that from their mutual intimacy, the manuscript of the reports of his judgments may have occasionally received corrections at his lordship's own hands ; though as these reports comprise, within the compass of two volumes, the proceedings of the Courts of King's Bench, Common Pleas, and Exchequer, and also of the

Equity courts, from the early part of the reign of George the First to the 21st of George the Second, they are necessarily very much abridged.

The able writer in the Annual Register, before quoted from, states that Lord Hardwicke, while Lord Chief Justice of England,—

“ Delivered from the bench a considerable number of solemn arguments upon important points. As he was master of much learning early acquired, so he showed a singular sagacity and felicity of genius in explaining, illustrating, and enforcing it. Such instructive lessons of jurisprudence, could not but be eminently useful to all who attended that court, either as students or counsel.”

That Lord Hardwicke added very largely to his reputation during the period that he presided as Chief Justice of England, and that he proved himself eminently fitted for the duties of a judge,—probably, indeed, much more so than for those of an advocate,—the reports of his decisions, and the whole account that we possess of his career, serve abundantly to evince.

Particular and great moral, as well as intellectual qualifications, are essentially necessary in a common law Judge, especially one who is to occupy so prominent a position on the bench as Lord Hardwicke did. Mildness, clemency, temper, and humanity, as well as discrimination and ability, and a strict and impartial love of justice and moderation, are here requisite; and in the character of Lord Chief Justice Hardwicke these noble endowments shone forth in full lustre; and obtained for their possessor all the admiration and veneration he deserved. Even Horace Walpole admits that he had gained great credit for his humanity in criminal cases. Our principal acquaintance with him in this capacity, is while he was Solicitor and Attorney General, and when he afterwards presided at the state trials as Lord High Steward in the

House of Lords. He seems also to have possessed that diffidence in his powers, so frequent an attendant on superior minds, which, without leading to undue distrust or hesitation, induced him to seek the aid of others on occasions of difficulty, or where any fear of injustice might be apprehended from an absolute reliance on his own abilities.

His judgments, while filling this high and important office, are distinguished by extensive knowledge, both of the principle and practice of law, sound reasoning, and a desire to administer strict justice in each case that came before him. As a great constitutional lawyer, his conduct while holding this exalted judicial situation, is no less worthy of admiration, in the line which he pursued with respect to the political measures already referred to. There is nothing either in his speeches or his judgments, of the tone and temper of the partisan, or the narrow one-sided view of the practised advocate. The reasoning is fine without being speculative; in theory it is perfect, and in practice fully capable of being applied. Though many of his dicta are founded on no previous decision of any of his predecessors, yet the correctness of them has been fully recognized, and they have formed a lasting guide to all his successors. The authorities referred to by him are most frequently selected from among the old and sound writers who laid the foundation of our jurisprudential system,—Littleton, Fortescue, Coke, and Hale; and to the civil law he occasionally had recourse, for illustration of the principle he propounded. There was the same corresponding marked difference discernible between the profound and cautious judge on the bench, and the acute and ingenious counsel at the bar; as between the judicial tones of the Chief Justice of England in the House of Lords,

and the professional advocate of the Government in the House of Commons.

As has already been mentioned, the salary of the Lord Chief Justice was increased on Lord Hardwicke's advancement to the bench, from £2000 to £4000 per annum; a proof at once of the value set on his services, and of the importance of the duties he had to discharge. Nor, considering the weighty nature of the cases to be decided, and the immense advantage of securing the ablest minds in their investigation, need we hesitate to affirm that, neither in the days of Lord Hardwicke, nor in our own time, are Judges or advocates at all overpaid.

Let us hope, however, —as I trust we assuredly may do,—that, although the pecuniary remuneration in every office of this kind, is the direct and immediate stimulant to exertion and enterprise; yet that, both in the advocate and the judge of exalted feelings, a far higher and nobler reward is their ultimate aim, in the approbation of a grateful contemporary age, and the veneration of those who come after them.

In the case of the noble and distinguished lawyer before us, he was not more honoured by the applause of those who witnessed his career, and who were enchanted by the pre-eminent wisdom which characterized his decrees, than he has been by that of succeeding ages, whose judgment has only confirmed the opinion of the former. In the study of his history, we of this day may, I trust, be instructed alike by the justice and purity of the principles which he inculcated; and by the vigour with which he enforced what he taught, through the example of his life.

## CHAPTER V.

1737—1740.

PROMOTION OF LORD CHIEF JUSTICE HARDWICKE TO THE CHANCELLORSHIP—COMPLIMENTS PAID HIM ON THIS OCCASION—HIS JOURNAL OF OCCURRENCES ATTENDANT ON HIS ADVANCEMENT—PATRONAGE BY HIM—THE POET THOMSON—CONDITION OF THE MAGISTRACY—LETTER ON EDUCATION—EDINBURGH MAGISTRATES BILL—DEATH OF QUEEN CAROLINE—BISHOP HERRING AND THE CHANCELLOR—SARAH, DUCHESS OF MARLBOROUGH—DEBATES ON THE REDUCTION OF THE ARMY, AND THE DEPREDATIONS OF THE SPANIARDS—BIRTH OF GEORGE THE THIRD—BISHOP SHERLOCK AND LORD CHANCELLOR HARDWICKE—DEATH OF SIR JOSEPH JEKYLL—THE DUKE OF NEWCASTLE AND LORD HARDWICKE—DEBATES ON THE LIBERTY OF THE PRESS, AND DANISH TREATY—JOCKELYN AND LORD HARDWICKE—LORD HARDWICKE'S EXCURSION TO PORTSMOUTH—DEBATES ON THE WAR, PRIVILEGE, MONEY BILLS, AND VERNON'S TROOPS—RAVAGES OF THE JAIL FEVER—JUDGMENTS OF LORD CHANCELLOR HARDWICKE IN SMITH CON. READ—MORE CON. MORE—ATT. GEN. CON. DR. STEPHENS—EDES CON. BRERETON—MORE CON. MORE.

WE now come to a period the most important in the history of Lord Hardwicke; as, however great was his skill as an advocate, and however large the reputation which he earned as the first common law judge of the land, yet, it is in his capacity of Lord High Chancellor of Great Britain,—his advancement to which office had at length been determined on,—that Lord Hardwicke is principally known to the world; and it is to the mode in which he discharged the functions of that exalted station, that he owes, in the main, the celebrity which he has obtained.

Since Lord Hardwicke's promotion to the Chief Jus-

ticeship, he had no doubt risen much in the opinion both of his Sovereign and the country at large. His great legal and judicial qualifications were then first fully displayed. As a debater in the House of Lords, he shone much more than he had done in the Commons. While acting as one of the Lords Justices, he had moreover exhibited considerable capacity as a minister. And his moderation, wisdom, and independence, on several remarkable occasions, had obtained for him the good opinion of all parties. He seems also to have advanced much in favour with the Queen, to whose discernment and influence many of the most distinguished men of this period owed their promotion. The delivery, therefore, to him of the great seal, was not only a popular measure, but he appears to have been at this time peculiarly pointed out as the fittest person to receive it; as the man, above all others, in whom general and full confidence would be placed.

The advancement of Lord Hardwicke to the Chancellorship led him to occupy a more prominent and elevated position in the political world, and occasioned him more frequently to come forward as a speaker in Parliament, as he was once more a partisan; and, as a Councillor of State, he was involved in various political measures which the Government, of which he was a member, from time to time propounded, but with which, while filling a mere judicial office, he could have no direct concern. This also was the means of connecting him more intimately with the events and history of the time.

The Chancellor, however, is not to be considered as the legal advocate of the Ministry,—their Attorney-General in the House of Lords; but, as the principal adviser of several proceedings of leading importance, for which he bears his share of responsibility, he

is, notwithstanding his judicial office, and his position in the House as the chairman of the assembly, necessarily obliged to deliver his opinion on the questions before them, and to defend the course which he has recommended for adoption.

The transition from the Chief Justiceship to the Chancellorship was undoubtedly advantageous, on the whole, both for the professional and the political fame of Lord Hardwicke. He appears to have been more fully adapted by constitution of mind, and by the peculiar qualities with which he was endowed, for an equity than for a common law judge. The power of deep reflection which he possessed,—his ability for dealing with the great principles of real property law,—of determining the bounds of equitable jurisdiction,—and of framing the leading doctrines with respect to this,—rendered him of immense value in his new position at such a period; and which his late office could never have conferred upon him, however high the reputation with which he would have adorned it. Very important was it also, that such a man should have his attention fully called to the consideration of the great political and constitutional measures propounded at that period; and that, in those very momentous times, his aid should be rendered to direct the councils of the state.

What a magnificent catalogue of names, does the list of the Chancellors of Great Britain exhibit. The office is not only the highest point of ambition with the ablest lawyers, but one which the most aspiring subject may be proud to hold. Among those who have attained this noble position, are to be found men remarkable alike for their genius, their wisdom, and their acquirements; as also for the essential services they have rendered both to their country and to mankind at large.

Lord Talbot, the late Lord Chancellor, appears to have possessed in a large degree the esteem and regard of men of all parties, and his death was universally lamented as a national loss. Smollett says of him that “by his worth, probity, and acquired accomplishments, he dignified the great office to which he had been raised.”

The particulars of the transactions which followed Lord Talbot’s death, are thus recorded by Lord Hardwicke in one of his note-books:—

“Memorand. : on Monday y<sup>e</sup> 14<sup>th</sup> day of Febr 1736-7, about five in y<sup>e</sup> morning, died Charles Lord Talbot, Lord High Chancellor of Great Britain; on w<sup>ch</sup> day the great seal was offered to me; but I took some days to deliberate thereupon, and went thro’ my sittings in Middlesex, during which time I sat as Speaker of the House of Lords by a new commiss<sup>n</sup> passed after the Lord Talbot’s death. On Monday 21<sup>st</sup> of Febr, at St James’s, the King delivered me the great seal in Council, where the oath of Lord Chancellor was administered to me, & I took my place at y<sup>e</sup> board accordingly; & went directly fro’ court to y<sup>e</sup> House of Lords, & sat there as Lord Chan<sup>cr</sup>.

“I continued Chief Justice of the King’s Bench, & did all acts of office at my chambers, till y<sup>e</sup> 8<sup>th</sup> day of June following, when I acknowledged a surrender of y<sup>t</sup> office before Mr. Justice Lee, who, on y<sup>e</sup> next day, being y<sup>e</sup> day before Trinity Term, was sworn Ch. Justice of that court, at my house in Lincoln’s Inn Fields. And note, y<sup>t</sup> during y<sup>t</sup> time—viz., in Easter Term—I sat one day in court as Ch. Justice in my black gown and hat, without any coif, & heard a motion, acc. to y<sup>e</sup> precedent of my L<sup>d</sup> Keeper Littleton, mentioned in Cro. Car. 600, 1 Sid. 338, 365.”

From a paper written at the time, it appears that, immediately after Lord Chancellor Talbot’s death, “the

Great Seal was deliv<sup>d</sup> by the Duke of Newcastle to His Majesty, who kept it in his custody till Monday, the 21st [of February], during which time there was nothing sealed but a commission, appointing Philip Lord Hardwicke, Speaker of the House of Lords during pleasure ;” and that Lord Hardwicke sat in Lincoln’s Inn Hall during the seals after Hilary Term, but he “was not sworn in Westminster Hall till y<sup>e</sup> 27<sup>th</sup> day of April, 1737, being y<sup>e</sup> first day of y<sup>e</sup> then next Easter Term, when his Lordship took y<sup>e</sup> oaths of allegiance & supremacy & the oath of office ; the Mas<sup>tr</sup> of the Rolls \* holding the book, and the deputy clerk of the Crown giving the oaths, after which the Attorney-General moved that the oath might be recorded ; but his Lordship did not take the oath of abjuration till another day in the King’s Bench.”†

A more minute account of all the circumstances attendant on Lord Hardwicke’s acceptance of the Great Seal is detailed in another part of his journal, in conjunction with other matters there stated ; and which, in the course of this narrative, will be submitted to the reader.

On Lord Hardwicke’s taking his seat in the Court of Chancery as Lord Chancellor, on the first day of Easter Term. and “in order to do the greater honour to his Lordship,” says Mr. Jeremy Bentham,‡ “Sir Robert Walpole, then Prime Minister, the then Lord President of the Council, and several others of the greatest officers of the state, attended him into the Court of Chancery, while he took his oath of office and his seat therein ; and I well remember being present in Westminster Hall upon that day, and seeing his Lordship afterwards going out of the Court of Chancery, from sitting as Chan-

\* Sir Joseph Jekyll.

† Hardwicke MSS., Wimpole.

‡ Cooley’s Anecdotes.

cellor, into the Court of King's Bench, where he sat as Lord Chief Justice of that court, to give his opinion in a cause of some consequence, which had been argued before him there ; so that it may truly be said, that he presided on one and the same day in the two highest courts of law and equity in Westminster Hall." This fact is also recorded by Sir John Strange in the following note, which is prefixed to his Reports in Easter Term, 10 Geo. II.:—"Lord Hardwicke being Lord Chancellor as well as Chief Justice of the King's Bench, came into court 29th April, took the oaths, and heard my motion."

One of the journals of the day, gives the following account of the extraordinary compliments that were paid to the new Lord Chancellor :—

*"London, April 30.*

"Wednesday being the first day of Easter Term, the Right Hon. the Lord Chancellor, in a very rich new coach of state, went from his house in Lincoln's Inn Fields, in the usual solemnity to Westminster. There rode in the cavalcade from his Lordship's house the Dukes of Newcastle, Dorset, and Grafton ; the Earls of Scarborough, Pembroke, Cholmondeley, and Islay ; the Right Hon. Sir Robert Walpole, Knt.; Henry Pelham, Horatio Walpole, and George Bubb Dodington, Esqrs.; Sir John Campbell, Bart., with many other peers and commoners, the judges, King's serjeants, and King's counsel. They likewise walked in the procession through Westminster Hall into the Chancery Court, where his Lordship took the oaths appointed by law before His Honour the Master of the Rolls. This is a compliment usually paid to a new chancellor ; but such a number of great personages hath not been known to appear before on the like occasion."

The Benchers of Lincoln's Inn also waited on Lord Hardwicke, to congratulate him on his appointment to his new office.

A letter of congratulation from the Mayor and principal inhabitants of Dover, was on this occasion sent to Lord Hardwicke, in which reference is made to that

town being the native place of the new Chancellor. The numerous letters from eminent personages which he received, and the warm expressions of regard and attachment contained in them, must have been as gratifying to Lord Hardwicke, as the distinguished honour conferred upon him which called them forth.

Lord Hardwicke was eventually succeeded in the Chief Justiceship of England by his old friend Mr. Justice Lee, in whose promotion he is said to have been mainly instrumental, and with whom he maintained a strict intimacy, which lasted until the death of this learned and able judge.

The journal which follows, which has already been referred to, and which is throughout in the handwriting of Lord Chancellor Hardwicke, records all the particulars of his acceptance of the Great Seal, and of some important events, immediately subsequent to this, in which he was a prominent participator.

“ On Monday, y<sup>e</sup> 14<sup>th</sup> of Febr<sup>r</sup>, ab<sup>t</sup> five in y<sup>e</sup> morning, died Charles Lord Talbot, Lord High Chanc<sup>r</sup> of Great Britain. The same forenoon, being at the sittings in Westminster Hall, I received a letter from Sir Rob<sup>t</sup> Walpole, desiring to speak with me on the event of that morning, & wishing that I would dine with him that day in private. I went accordingly, & after dinner he proposed the Great Seal to me in the King’s name. Thereupon, I took occasion to state to him the progress of what related to y<sup>t</sup> affair since y<sup>e</sup> session of Parl<sup>t</sup>, which ended in 1733. That I was now in a quiet situation, which by practice was become easy to me. That I had no ambition to go higher; & tho’ I had the most dutiful & grateful sense of His Maj<sup>ty</sup>’s goodness, desired to be left where I was.

“ He grew more pressing, & talked in y<sup>e</sup> civil strain familiar to ministers on such occasions : after which I told him I would come to no resolution then, but would consider of it. At y<sup>e</sup> same time, I acquainted him with the near prospect of the office of chief clerk of the King’s Bench soon fall<sup>g</sup> into my disposition, which I might grant for two lives for the benefit of my family, & therefore (if I sho<sup>d</sup> at last determine to accept the Great Seal) common prudence required that I sho<sup>d</sup> have some equivalent. Sir Robert entered into this with earnestness ; said it was not only reasonable but necessary ; & at first hinted at some treaty with Mr. Ventris for a surrender of the office, & letting in a new life for y<sup>e</sup> benefit of my family, or taking one of the additional £1000 p<sup>r</sup> ann. from the office of Chief Justice of the King’s Bench, & restoring it to the Chancellor’s office.

“ I explicitly, & without hesitation, declared that I would do neither ; for I would not lessen the place I left, to the prejudice of my successor, to augment that which I should be going into, & I compared it to y<sup>e</sup> case of a bishop who was about to be translated, calling in his tenants to fill up leases at an undervalue. I told him further that, if I sho<sup>d</sup> happen to accept y<sup>e</sup> Great Seal, y<sup>e</sup> most proper equivalent to my family seemed to be y<sup>t</sup> of y<sup>e</sup> office of Teller of y<sup>e</sup> Exchequer, to my eldest son in reversion, for life, for I was determined to take no sum of money, nor any augmentation of salary.

“ He readily declared this to be very reasonable, but as the King had a dislike to reversionary grants, especially those for life, this point must be reserved for His Majesty’s pleasure, as the principal one was for my deliberation.

“ After a few days, I was made acquainted that the King persisted in his intention to put y<sup>e</sup> Great Seal into

my hands, & was willing to grant the teller's place in the manner which had been suggested, whercupon I resolved humbly to submit myself to his royal pleasure, by taking on me this arduous and burdensome station.\*

"Soon after this, people began to be sounded on a motion projected to be made in the House of Commons, for an increase of allowance to the Prince of Wales, & for settling a jointure on the Princess. This was the first time I had ever heard of such an intention; for tho' stories had been told of uneasiness at Court on y<sup>t</sup> head, and y<sup>t</sup> some warm young men were for a project of that kind, yet it had never been seriously spoken of as a measure before now. The agitation raised by this last affair, together with the King's imperfect recovery from a bad fit of illness, prevented the actual delivery of the Great Seal till Monday the 21st of February.

"During this interval, I had much discourse with the ministers about this unhappy difference in the royal family, & may with truth say, that, tho' an augmentation of the Prince's allowance was then impossible to be obtained, I was in some degree instrumental in prevailing to settle the £50,000 per ann. on his R. H., for the joint lives of the King & himself. In this I had two views— one to strengthen the King ag<sup>st</sup> the approaching attack in a part the least defensible;— the other, to secure a cert<sup>n</sup> provision to the Prince in all events; for, as the flames now broke out might probably in time spread, &

\* The following is given in a note to Horace Walpole's Memoirs. "A story is current that Sir Robert, finding it difficult to prevail on Lord Hardwicke to quit a place for life for the higher but more precarious dignity of Chancellor, worked upon his jealousy, and said, that 'If he persisted in refusing the seals he must offer them to Fazakerley.' 'Fazakerley!' exclaimed Lord Hardwicke, 'impossible! he is certainly a Tory, perhaps a Jacobite.' 'It's all very true,' replied Sir Robert, taking out his watch; 'but if by one o'clock you do not accept my offer, Fazakerley by two becomes Lord Keeper of the Great Seal, and one of the stoutest Whigs in all England.'"

burn fiercer, it was not easy to foresee to what lengths the resentments of some, & the officious zeal or ductility of others might carry them.

“ On Saturday night, the 19<sup>th</sup> Feb<sup>y</sup>, I was called to a meeting at Sir Robert Walpole’s, where were present the Dukes of Grafton, Devonshire, and Newcastle, the Earl of Scarborough, and Mr. Walpole. Sir Rob<sup>t</sup> then informed us, with how great difficulty he had at last persuaded the King to submit to make the Prince’s allowance independent, & to settle the jointure; & that the King wo<sup>d</sup> give him auth<sup>y</sup> to declare to the House of Commons when the motion sho<sup>d</sup> be made, that His Majesty had agreed to both these points.

“ Some of y<sup>e</sup> company, of whom I was one, but what person in particular began it has escaped my memory, made an objection that if this sh<sup>d</sup> be declared first in y<sup>e</sup> House of Commons with<sup>t</sup> the Prince, or at least his treasurer, being previously acquainted with it, it would have the aim of an intended surprize; &, besides, the friends of the Royal Family there might think themselves ill used, to be brought into so great a difficulty as to voting in a dispute between the King & Prince, when perhaps such a previous step might have prevented its coming in.

“ Tho’ this objection was made, yet a public message to y<sup>e</sup> Prince was never once mentioned, or (as I verily believe,) then thought of; nay, Sir Robert Walpole then declared, that it was vain to imagine that the King could ever be brought to, what would be called so low an act of submission to his son, as to permit any private communication of y<sup>e</sup> kind y<sup>n</sup> hinted, to be made to him, after y<sup>e</sup> steps y<sup>e</sup> Prince had already taken. With this the meeting broke up.

“ On Sunday, the 20<sup>th</sup> of Feb<sup>y</sup>, about noon, I received

the King's commands, by the Duke of Newcastle, to attend His Majesty the next day in council to receive the Great Seal, & the Privy Council was summoned to meet on Monday, at 12 of y<sup>e</sup> clock. I went to court about that hour, expecting no other business but the solemnities usually attending the appointment of a Lord Chancellor, when the Duke of Newcastle meeting me there, told me that it was resolved to send a message to the Prince, by some lords of the Cabinet Council, but that he understood I was not intended to be one, by reason that I had been but so lately invested with my new employment.

“Not long afterwards, whilst I was waiting in the room next the bed-chamber, with my Lord President, the Dukes of Argyle & Newcastle, and several other Lords, Sir Robert Walpole came out of the King's Closet, in a great hurry, with a paper in his hand; & calling all the Lords of the Cabinet then present about him at the upper end of the room, acquainted them that it was the King's pleasure that the message, of which he then read over a draught in his (Sir Rob<sup>t</sup> W.'s) own handwriting, should be forthwith carried to the Prince by the Lord Chanc. L<sup>d</sup> President, L<sup>d</sup> Steward, & L<sup>d</sup> Chamberlain. I own, after what I had been told, the naming of me did not a little surprise me, and made me expostulate with Sir Robert aside, on the hardship of mak<sup>g</sup> such a disagreeable errand to the Prince, my first act of office. He assured me that he had hinted this to the King, as far as he durst venture in so nice a case; but His Majesty's answer was,—*my Chancellor shall goe.*

“’Twas impossible further to dispute the King's first command, especially on an occasion so liable to jealousy; but my expostulation bro<sup>t</sup> about this variation in point of form, that, instead of the four officers before mentioned, the whole Cabinet Council were ordered to go

with y<sup>e</sup> message. This affair was transacted with such precipitation, of which several lords complained, that there was no opportunity to consider the penning of y<sup>e</sup> message as it deserv'd. Indeed, y<sup>e</sup> time pressed extremely; & y<sup>e</sup> place was highly improper for such a consultation, for y<sup>e</sup> company of y<sup>e</sup> levee filled y<sup>e</sup> room, & I verily believe, heard many of y<sup>e</sup> things which passed, whereof no doubt was made amongst us but H.R.H. was immediately informed.

“ However, I hazarded an objection to an expression in y<sup>e</sup> draught, as too rough and harsh. The draught had these words :—*the undutiful measures which His Majesty is informed your R.H. intends to pursue.* It was answered that the King wo<sup>d</sup> not hear of parting with the word *undutiful*, & that it was with much difficulty he was induced not to add severer epithets. Therefore, the utmost I could prevail for was, to change the word *intends*, into *hath been advised to pursue*, as it now appears in y<sup>e</sup> Votes of y<sup>e</sup> House of Commons.

“ It now growing late, S<sup>r</sup> R. W. told us that business of moment was expected in the House of Commons, & he with Sir Cha. Wager must of necessity go thither; & L<sup>d</sup> Ilay went to y<sup>e</sup> House of Lords, on pretence of hearing of y<sup>e</sup> Duke of Athol's claim of y<sup>e</sup> Barony of Strange, which was appointed for y<sup>t</sup> day.

“ About two of the clock, the King came into council, & there delivered me the great seal, with very gracious expressions, whereupon I was sworn Lord Chancellor.

“ After the King was gone, the ten Lords, L<sup>d</sup> Chancellor, L<sup>d</sup> President, L<sup>d</sup> Steward, (D. of Devon.) L<sup>d</sup> Chamberlain, (D. of Grafton) D. of Richmond, D. of Argyll, D. of Newcastle, Earl of Pembroke, Earl of Scarborough, Lord Harrington, who afterwards carried the message, remained in the Council Chamber to

deliberate in what manner to execute their charge. It was not yet writ out fair, & a rumour went about y<sup>e</sup> Court, y<sup>t</sup> y<sup>e</sup> Prince was just going from y<sup>e</sup> Princess's drawing-room to the House of Commons. In order to prevent this, & that H.R.H. might be regularly informed of what was intended, tho' it was not questioned but he was already apprized of it, it was resolved to send the Lord Steward & L<sup>d</sup> Chamberlain to acquaint him that they, with several other Lords, were ordered to attend His R.H. with a message fro' y<sup>e</sup> King, & to desire to know his pleasure when he would receive it. He answered, in his own apartment immediately.

"It was next considered, whether to leave the paper with y<sup>e</sup> Prince, so as to give time to deliberate of an answer or not ; & it was y<sup>e</sup> unanimous opinion of y<sup>e</sup> Lords to leave it with His R.H. in case he should desire it ; but not otherwise, bec. we had no directions from y<sup>e</sup> King for y<sup>t</sup> purpose.

"As soon as y<sup>e</sup> fair copy had been exam<sup>d</sup> with the draught, all y<sup>e</sup> ten Lords went with it to the Prince's apartment. H.R.H. came imme'd'ly into his levee-room ; & as this was the first time I had come into his presence after my promotion, I advanced forward and kissed his hand ; on which occasion he congratulated me, with expressions of much kindness.

"When all the Lords were come into y<sup>e</sup> room, & y<sup>e</sup> door shut, I read the message to the Prince very audibly & distinctly, & took care to lay a particular emphasis on the words, *hath been advised to pursue*. As I read that part which asserts the £50,000 *pr. ann. to have been paid by monthly payments, at y<sup>e</sup> desire of his R.H., preferably to quarterly payments*, he said, *that is true*.

"The reading being finished, there was a short pause, & y<sup>e</sup> Prince looked about him. Then he said, ' My Lords,

*am I to give an immediate answer?* To which I answered, *as, or if*, your R.H. pleases, for I don't precisely remember y<sup>e</sup> first word. He then proceeded to make y<sup>t</sup> answer, y<sup>e</sup> effect whereof was afterwards reported.

"It fall<sup>s</sup> to my lot to go out of the room last, the Prince stopt me at the door, the other Lords being at some distance, & in a whisper said several things to me, of w<sup>ch</sup> I do not pretend to remember y<sup>e</sup> very words, especially as I was then in some confusion, & indeed most tenderly affected with y<sup>e</sup> occasion. But I am sure y<sup>e</sup> substance was, repeating his dutiful disposition to the King, his concern for the present dispute; & declaring that he had several times spoke to the Queen on the subject of his allowance. To this I said, that I was from the bottom of my heart sorry for this incident, 'But I beg that whatever your R.H. intends to say by way of answer to the message, may be said to all the Lords, for no one of us has auth<sup>y</sup> to receive it.'

"Thereupon I affirm, the Prince replied, 'I don't intend this by way of answer; I say it to you, my Lord, that you may make use of it as you shall see proper.'

"After this, I, with the rest of the lords, withdrew into y<sup>e</sup> Council Chamber, where it was first considered what was to be done relative to y<sup>e</sup> answer. I acquainted them fully with what had passed bet<sup>n</sup> y<sup>e</sup> Prince and me in y<sup>e</sup> whisper, which was, with<sup>t</sup> hesitation, agreed by all not to be consid<sup>d</sup> as p<sup>t</sup> of y<sup>e</sup> answer. It was next, with y<sup>e</sup> same unanimity, resolved not to pretend to report y<sup>e</sup> very words of y<sup>e</sup> answer as spoken by y<sup>e</sup> Prince, bec. H. R. II. had deliv<sup>d</sup> it with some confusion, & with a repetition of y<sup>e</sup> same or y<sup>e</sup> like expressions, which made it impossible, as well as not for his service, to attempt that.

"I think some mention was made, whether it was

necessary to go back, & desire an answer in writing, but it was objected y<sup>t</sup> we had no such instructions ; & indeed, it was y<sup>e</sup> opinion of all y<sup>e</sup> lords y<sup>t</sup> it was best to take it as it was, because we had now y<sup>e</sup> Prince's own genuine sense, full of dutiful expressions towards y<sup>e</sup> King, his father, & free fro' any thing provoking ; whereas, if we had given an opportunity for further deliberation, ther<sup>e</sup> was danger least those who had kindled this flame might be advised with, and in y<sup>e</sup> same view might insert something irritating in y<sup>e</sup> answer.

“ It was, therefore, y<sup>e</sup> unanimous opinion of all y<sup>e</sup> lords, to set down in writing y<sup>e</sup> substance of y<sup>e</sup> Prince's answer by way of recital, adhering religiously to the sense, & making it as full of respect & duty to the King as y<sup>e</sup> fact would bear ; & this fro' motives equally regarding H. R. H. & the public service. Indeed, I never in my whole life, saw a stronger disposition in any set of men, to do what might be most just & fit, or most for y<sup>e</sup> real interest of both y<sup>e</sup> Royal persons between whom they had been transacting, or to prevent any ill consequences, than appeared in this company, on this occasion.

“ Thus y<sup>e</sup> answer was settled as printed in y<sup>e</sup> votes of y<sup>e</sup> House of Commons, & at night reported by us all to y<sup>e</sup> King, who looked displeased, but said not one word.

“ I have in my custody y<sup>e</sup> original message, w<sup>ch</sup> I read to y<sup>e</sup> Prince, & y<sup>e</sup> orig<sup>l</sup> answer, w<sup>ch</sup> I read to y<sup>e</sup> King.

“ Strange work was afterwards made in y<sup>e</sup> House of Commons, by endeavouring to mix some things w<sup>ch</sup> y<sup>e</sup> Prince had (as above related) said *privately* to me with y<sup>e</sup> public answer ; but that was not ventured upon in y<sup>e</sup> House of Lords ; & y<sup>e</sup> day y<sup>e</sup> debate came on there, my Lord Baltimore told me, fr<sup>o</sup> y<sup>e</sup> Prince, *that H. R. H.*

*was sorry for what had passed of y<sup>e</sup> kind in y<sup>e</sup> other House; that it was Mr. Hodges's mistake; and y<sup>t</sup> what he had said to me at y<sup>e</sup> door, he did not intend as p<sup>t</sup> of his answer.*

“Of what passed in y<sup>e</sup> House of Lords, I will say nothing here, because it is notorious. The part I took in it, was such as in my conscience I thought right, being convinced y<sup>t</sup> y<sup>e</sup> application to Parl<sup>t</sup> was unjust in its nature, & pernicious in its consequences. In y<sup>t</sup> view I opposed it upon topicks drawn fro' y<sup>e</sup> dignity & authority of y<sup>e</sup> Crown, and y<sup>e</sup> welfare of y<sup>e</sup> whole Royal Family, wherein at least I believed I acted agreeably to y<sup>t</sup> primary duty which I owed to y<sup>e</sup> King, my master, & that secondary one which I owed to y<sup>e</sup> Prince.

“After this, y<sup>e</sup> first question which arose at Court relative to this dispute, was the *quantum* of y<sup>e</sup> Princesses' jointure. The King referred this to y<sup>e</sup> consid<sup>n</sup> of the Cabinet Council, & Sir Robert Walpole opened it to us with a declaration that His Majesty was inclined to think £30,000 per ann. sufficient, but not having formed any fixed resolution, was desirous to be advised by y<sup>e</sup> lords. The place I filled, obliged me to deliver my opinion first, with my reasons at large; upon which I concluded for £50,000 p<sup>r</sup> ann., & afterw<sup>ds</sup> all y<sup>e</sup> lords *seriatim* declared themselves to be of y<sup>e</sup> same opinion, for y<sup>e</sup> reasons given by me.

“In this advice I had two views. I thought it right, & consistent, y<sup>t</sup> y<sup>e</sup> Princess sho<sup>d</sup> have y<sup>e</sup> like settlement as was made on y<sup>e</sup> Queen when Princess of Wales. In y<sup>e</sup> next place, I hoped it might prove a circumstance tending to bring about a larger allowance to the Prince, since y<sup>e</sup> argum<sup>t</sup> wo<sup>d</sup> be strong y<sup>t</sup> if £50,000 p<sup>r</sup> ann. was judged reasonable for a Dowager Princess of Wales, y<sup>e</sup> same £50,000, together with y<sup>e</sup> Dutchy of Cornwall,

could hardly be thought sufficient for a Prince & Princess of Wales, & the families of both.

“Notwithstanding this, the breach rather widened than closed, till on the 5<sup>th</sup> of July (1737) a comunicat<sup>n</sup> was made by letter from the Prince to the Queen, that the Princess was with child. Disagreeable circumstances happen<sup>d</sup> aft<sup>rs</sup>, & it was the common bruit of the Court, that it was determined in the Princesses family that her R. H. should lye-in in London, & not at Hampton Court; the then residence of the King and Royal Family.

“The manner in which she was hurried away to St. James’s, under the pains of labour, without the least notice to the King or Queen, are well known; a conduct for which I never yet heard any justification or even excuse.

“The King’s resentment, produced the message of the 3<sup>rd</sup> of Aug<sup>t</sup>, at the sitting of which were present Lord President, Lord Harrington, Sir Rob<sup>t</sup> Walpole, & myself. The only part I had in that draught, w<sup>ch</sup> prevailed, was the first sent<sup>ce</sup>, expressing the K<sup>g</sup>’s joy at the safe delivery of the Princess, for I had proposed one more short and mild, in these words, viz.:—

“ ‘The King hath commanded me to acquaint your R. H. that His Majesty is most heartily rejoiced at the safe delivery of the Princess; but that on acct<sup>t</sup> of cert<sup>n</sup> circumstances in your Royal Highness’ behaviour, relating to that event, which have given His Majesty just offence, he thinks it not proper to see you; with the particular reasons whereof he will cause your R. H. to be acquainted in due time.’

“I thought this wo<sup>d</sup> show greater tenderness for y<sup>e</sup> present condition of y<sup>e</sup> Princess, & gain time for cooling before aggravating circumstances were fixed, by being recapitulated in writing. However, the draught that was

aft<sup>ds</sup> sent, prevailed, for w<sup>ch</sup> my L<sup>d</sup> President declared himself more explicitly than is usual with him ; but L<sup>d</sup> Harrington was silent.

“ I will not now repeat y<sup>e</sup> several letters sent afterwards by y<sup>e</sup> Prince to y<sup>e</sup> King & Queen, which were declared by persons on y<sup>t</sup> side to contain a full submission, & by the courtiers y<sup>e</sup> contrary. But it may not be altogether improper to preserve y<sup>e</sup> memory of a particular incident which happened to myself. On y<sup>e</sup> 4<sup>th</sup> of Aug<sup>t</sup>, the day of prorog<sup>g</sup> the Parl<sup>t</sup>, I made S<sup>t</sup> James’s in my way to Westminster, in order to inquire after the health of the Princess of Wales, & the new born Princess. After I had performed that ceremony, I went away, & was overtaken at the further end of Pall Mall by one of the Prince’s footmen, with a message that his Royal Highness desired to speak with me. Being returned, I was carried into the nursery, whither the Prince came immediately out of the Princess’ bedchamber, & turned all the women out of the room. Having said many civil things, & made me sit down, he showed me the message he had rec<sup>d</sup> the day before from the King, which he said he presumed I, being of the cabinet, must have seen before. Without staying for an answer, he made a long apology for his conduct, much to the effect of his first letter to the King, with this addition, that if the King, who was apt sometimes to be pretty quick, sho<sup>d</sup> have objected to her going to London, & an altercation should have arisen, what a cordition would the poor Princess have been in ? He then said he would read me two letters he had written, the one to the King, & the other to the Queen : whereupon I asked him whether they had been sent ; for if they had not, I was determined in my own mind not to have seen or heard them read. He answered, they were sent the day bef<sup>e</sup> by my L<sup>d</sup> Jersey,

& then read them. He asked me what I thought of them, at which I bow<sup>d</sup> & said nothing. He went on that upon those letters the King sent word he would not see him ; but he did not think fit to let it rest there on his part, & had sent ano<sup>r</sup> letter by Lord Carnarvon that morning, which he read, & asked me if it was not very respectful ; [to] this I answered *very respectful* ; & indeed it was a much more proper letter than the former. I then proceeded to tell his Royal Highness that I had heard nothing of this unhappy affair till my going to Hampton Court on the Tuesday before, to congratulate the King & Queen on the birth of their grand-daughter. That I then found their Majestys highly offended at what had passed ; & I should be unjust to his Royal Highness if I concealed from him that, from the cir'ces preceding & accompanying the carrying away the Princess, they understood it to proceed from a deliberate intention to take that part with<sup>t</sup> their privacy. I added that incidents of this nature gave the deepest concern and affliction to every one who wished well to the whole Royal Family, & to none more than myself. That every occasion of this kind ought to be removed ; for that *union* in the Royal Family was most essential to the true interest & preservation of it. That the contrary gave the most formidable advantages to their enemies ; whereas nothing could hurt any branch of it when united. That I hoped his Royal Highness w<sup>d</sup> show such a submission & dutiful behaviour to the King his father at the present juncture, as would tend to bring about this union, & that I was sure it w<sup>d</sup> be the zealous endeavour of the King's servants, & in particular of myself, to do every thing that might facilitate it. He answered, *My Lord, I don't doubt you in the least, for I believe you to be a very honest man* ; & , as I was rising up, embraced me, offering

to kiss me ; I instantly kneeled down and kissed his hand, whereupon he raised me up and kissed my cheek. The scene had something in it moving, & my heart was full of the melancholy prospect that I thought lay before me, which made me almost burst into tears. The Prince observed this, & appeared moved himself, & said, *let us sit down my Lord, a little, & recollect ourselves, that we may not go out thus.* Soon after which I took my leave, and went directly to the House of Lords.

“ After the other message concerning the christening, the Prince sent two letters more. That to the King went fur<sup>r</sup> than the former, calling what he had done a fault, & asking pardon for it ; but particular except<sup>n</sup> was taken against that to the Queen, as carrying an implication that the King’s not being reconciled to his son was owing to her. I own I thought this a strained construection, & did not scruple to say so ; but I soon found that the partizans on either side had no mind to make up the breach. On the side of the Prince, those who wanted to set him at the head of the opposition ags<sup>t</sup> his father’s measures, seemed to have it in view to write such letters to the King as might read well, & when published to the world be taken as a submission ; & at same time effectually to prevent that from being accepted by provoking the Queen, & thereby cut off the channel of mediation, & shut the only door thro’ which any reconciliation could enter. On the other side, S<sup>r</sup> R. W. seemed to think that they had now an advantage over the Prince, which ought not to be parted with, & that it would be better for the administration to have a total declared separation, than that things should remain in the precarious doubtful state in which they then stood.

“ My wish and sincere view was that an absolute complete reconcilia<sup>n</sup> should be brought about, as essential to

the King & his family, & the whole nation ; & I was persuaded that fatal mischiefs, & infinite difficulties would arise, from the breach being made wider, by a total separation. From hence, I thought it my duty to explain my thoughts fully on this head to S<sup>r</sup> R. W., as the K<sup>g</sup>'s chief minister, and for that purpose went over to New Park early on the 24<sup>th</sup> of Aug<sup>t</sup>.

“ I began with laying it down as a principle that, in this nice affair, two great points were always to be pursued. First, the real & essential interest of the King & his family, in w<sup>ch</sup> the whole kingdom was involved ; & next, the support of that authority & reverence, which was due to His Majesty. That it was the duty of his ministers & servants to endeavour & combine both these views, & in their conduct not to lose sight of either. That I co<sup>d</sup> not help thinking that, if there was a disposition to it, a reconciliation might be effected consistently with both ; but, if that should be found impossible, a total separation must indeed be submitted to ; however, I begg<sup>d</sup> leave to lay before him several considerat<sup>ns</sup> w<sup>ch</sup> seemed to me very material in this great question, some whereof distinguished the case from that of the quarrel in the late reign, & made the present breach more formidable.

“ 1. That it ought to be considered what influence it would have on the question, w<sup>ch</sup> had been once moved in Parl<sup>t</sup>, & was expected to be brought there again, viz., the Prince's demand of a larger allowance ; & this upon different suppositions. It appeared to me that, if the King should be finally in the right, & the Prince continue, as he was certainly at first in the affair of the departure, in the wrong, it would strengthen the King as to that question, for nobody co<sup>d</sup>, with any shadow of reason, maintain that the King could with decency be

address<sup>d</sup> to increase his son's allowance, whilst he was standing out in defiance: But, on the other hand, it must be attended to, that this offence was such as to admit of a satisfact<sup>n</sup> between a father & a son ; &, if the world sho<sup>d</sup> think the Prince had made a proper submission, & yet the King turn him out of doors, it would strengthen the Prince in his demand ; since it might then be said, that the King had causelessly obliged him to live by himself with an increase of family, at a greater expense. I added, that it must be expected that, even those who least wished a reconciliation, would advise him to make such a submission, when they were sure it could not, or wo<sup>d</sup> not be accepted.

“ 2. That, in the next place, the situation & circumstances of the Royal Family deserved the greatest attention. In the late reign, the difference concerned only the K<sup>s</sup> & Prince ; there were no other children to be affected by it. The moment the breath was out of the late K<sup>s</sup>'s body, it was at an end as to the Royal Family, tho' particular subjects might feel its effects. That now the case was far different. A Queen consort, the Duke, & four Princesses, not to include the Princess of Orange, will necessarily be, to a degree, involved in it. If the Prince sho<sup>d</sup> survive his father, he must & ought, by the course & law of nature, to reign. All these will be more or less in his favour. The Queen possibly least of all ; but how far the honey-moon of a new reign may carry men as to her large jointure, no one can foresee. The others absolutely. Yet these must now, as they justly deserve, live at court in the sun shine of the King's & Queen's favour, the Prince being excluded. This will naturally breed an alienation of affection ; great envying & much ill blood, which may break out into fatal consequences, when the Prince shall find himself their sovereign. Add

to this, that it is not probable that any settlement will ever be obtained from the Parliament, to make cadets of the Royal Family independent of the person who shall wear the crown.

[“Memd<sup>m</sup> y<sup>t</sup> on y<sup>e</sup> 18<sup>th</sup> of Aug<sup>t</sup> in an audience, with w<sup>ch</sup> the Queen was pleased to honour me, I pressed these considerations on Her Majesty, as points of y<sup>e</sup> last importance to herself & her children.”]

“3. Consider next, the case of the Prince’s children. Either the King must take the custody of them, or leave them with his R.H. If he should take them, having a favourite younger son, & several daughters justly dear to him, what jeal<sup>sies</sup> & suspicions may not arise in case of accidents. Malice may even suggest what was once believed in France of the late Duke of Orleans. If the King sho<sup>d</sup> suffer these breaches of the Royal Family to remain with the Prince, will it not greatly weaken the former, & strengthen the latter? And at length, they will be bred up under the same influence, which is now objected to their father.

“4. As to the administration, what an inundation of pensions did the breach in the late reign introduce? What a weight did that bring on my Lord Sunderland’s ministry? & it should be considered whether even that miserable expedient will be found practicable under this King. The present demands of mankind will rise on one side, in proportion as greater hopes are held out to them on the other. It put L<sup>d</sup> Sunderland on strong measures to secure himself, which yet he could not carry. Witness the Peerage Bill, wherein were several right provisions tempting to the Whigs, & yet they rejected it.

“5. It will make a coalition between the Whigs, desperate & impossible. Before this, the Whigs in opposition wanted a head; became liable to the disagree-

able imputat<sup>n</sup> of constantly acting with the Jacobites ; & had no prospect of ever coming into any share of power, but by reuniting with their old friends. They will now find a head in the Prince, & he being the immediate successor in the Protestant line, will be an irrefragable answer to the reproach of Jacobitism, which I have ment<sup>d</sup>. Besides, the Whigs as a party will, in good policy, not wish such a coalition, unless it c<sup>d</sup> be accomp<sup>d</sup> with a reconciliation bet<sup>n</sup> the father and son, lest it sho<sup>d</sup> throw the success<sup>n</sup> wholly into the hands of the Tories, & make their cause desperate when he comes to the possession ; whereas, by having one set of Whigs in the Prince's favour, the party will have a fair chance to be preserved from ruin, when that event shall arrive.

“ 6. Lastly, it must not be forgot, that, if the King should carry his resentment so far as to remove his son out of his palace, it will be necessary that some acc<sup>t</sup> of a transaction of this high nature in the Royal Family, should be given to Foreign Courts. This measure was taken in the late reign. If the Prince should at length fully submit himself to his father, & do that, which the world shall judge a complete satisfaction for the late offence, what reasons can openly be assigned to justify such a conduct ? I will not say that reasons may not be suggested from a series of conduct, offensive & provoking in many other respects ; but, when these come to be coolly examined, I doubt they will be found such, as it will be extremely difficu<sup>t</sup>, if not impossible, publicly to avow & explain.

“ Upon these several heads, I enlarged to the minister much more fully than is here recited. He expressly allowed them all to be considerations of great weight, with<sup>t</sup> attempt<sup>s</sup> to take off their force, except as to that of the Princes children, which he said were intended to be

left with their parents, whilst of tender age, only for nurture. The great point, on which he laid his stress, was that the King had now an advantage by the Prince hav<sup>g</sup> put himself so much in the wrong, which ought not to be parted with. That he was apprehensive there must be a total breach, before there could be a complete reconciliation; & to make up the particular difference about carrying away the Princess from Hampton Court, with<sup>t</sup> the grand point, would be not so much as skinning over the sore, w<sup>ch</sup> wo<sup>d</sup> infallibly break out again worse than ever. That it was impossible to reconcile the whole, with<sup>t</sup> *the money*, & that co<sup>d</sup> not now be obtained; neither was it fit to advise the King to make fur<sup>r</sup> advance, untill his son, by proper acts of submission, & a declared alteration of conduct, sho<sup>d</sup> put himself in a condition to rec<sup>e</sup> it.

“As to the submission already made, he enlarged much on the offensive behaviour to the Queen; & in particular, objected that, altho’ the King in his message had charged the *fact to be a high indignity to himself & the Queen*, the Prince had not in any of his letters asked her pardon, or so much as made an excuse to Her Majesty for what he had done.

“Hereupon, I took occasion to observe that this was manifestly the game of those advisers of the Prince, who intended to prevent a reconciliation; & as this last was their point, they cou<sup>d</sup> not play their cards better. That consequently, the most effectual method of disappointing it, must be the left play on the other side. And as the Queen had great talents, as well as great power with the King, wo<sup>d</sup> it not become her wisdom to suppress the woman’s resentment, & take the contrary part to that into w<sup>ch</sup> these men wished to drive her? That, in my opin<sup>n</sup>, if Her Majesty continued unmoved by their ill-

usage, & in spite of all their provocations wo<sup>d</sup> reconcile the father to his son, she wo<sup>d</sup> endear herself to the nation more than ever, & make an absolute conquest of all her enemies at once.

“The next day, the Dukes of Grafton, Devonshire, & Newcastle, & Mr. Pelham, dined at the New Park with Sir R. W., who told them that I had made him a long visit the day before, & had talked to him like an angel for an hour together on the subject of the Prince, but he thought all my arguments [made] for his *conclusion* rather than *mine*.

“ ‘Nescia mens hominum fati sortisque futuræ,  
Et servare modum, rebus sublata secundis!  
Turno tempus erit, magno cùm optaverit emptum  
Intactum Pallanta ; et cùm spolia ista diemque  
Oderit.’

“On Monday, the 5<sup>th</sup> of Sept<sup>r</sup>; I was desired to meet S<sup>r</sup> Rob. Walpole at Hampton Court, with only the Duke of Newcastle & Mr. Pelham. There the minister produced two other letters by the Prince to the King & Queen respectively, after the christening ; & acquainted us that the King was not in the least satisfied with any of the submissions his son had hitherto made. That with regard to His Majesty himself, they were mere words, and calculated to be offensive & provoking to the Queen. That none of the letters contained any assur<sup>ce</sup> of a change of conduct, or of acting in subordination to his father’s will for the future. That his R. H. was entirely under the influence & direction of persons whom His Majesty had tho<sup>t</sup> fit to remove from his councils & service, & who were in a determined opposition to all his measures ; & that *L<sup>d</sup> Chesterfield* & *L<sup>d</sup> Carteret* were known to be with him in private every day, & were called into the closet after the levee, as regularly as

the K<sup>g</sup>'s ministers were called into his. He recapitulated many particulars, to show that the Prince had avowedly set himself at the head of a faction in opposition to the King, & therefore that these letters were understood by the King to proceed from their dictates, & to be intended only to amuse & deceive him. That things being in this situat<sup>n</sup>, the King had come to a resolution not to permit his son to reside any longer in his palace, but to send him an order to depart with his whole family, as soon as it co<sup>d</sup> be done with<sup>t</sup> prejudice or inconvenience to the Princess; & had commanded him to prepare a draught of a message for that purpose, which he read to us.

“ We all expressed our concern at this extremity, & our opinion that it sho<sup>d</sup> be avoided, if possible to be done, saving the King's honour. But we were told it was the K<sup>g</sup>'s fixed resolution; upon which, I said that I had already at large declared my sentiments as to the measure & its consequences, some of which I repeated; & then it was proposed that, before any such order was sent, a message should be sent to the Prince, informing him what kind of submission the King expected from him, & what alterations in his conduct His Majesty required as the terms of a reconciliat<sup>n</sup>. But it was answered by Sir R. W. that this wo<sup>d</sup> only beget mutual altercations, & a paper war between the King and his son, which wo<sup>d</sup> be worse than taking it short at first.

“ We then proceeded to consider the draught of the message, which had many stinging epithets & expressions, & a paragraph towards the conclusion, containing a severe reproach on *persons in general* resorting to the Prince, who did not pay their court to the King, but opposed his measures, call<sup>g</sup> them a faction, with other strong & hard words. To all these I objected, as a style improper between princes, and indecent from the King

to his son. I thought, if a message of this nature must go, it should be strong, but full of decorum. S<sup>r</sup> R. W. declared his opin<sup>n</sup> that, as the Prince had plainly set himself at the head of the opposition, it was right to carry the war into the enemies' country; & as they attacked the King thro' the sides of his ministers, to outrun it by falling on the Prince's advisers. To this I replied that, as to such advisers as fomented this fatal division in the Royal Family, the harshest words w<sup>ch</sup> language could furnish were not too much; but my objection was that, as the draught then stood, it comprised more, & might extend to all that came to the Prince, who happened to differ from the K<sup>g</sup>'s ministers in Parl<sup>t</sup>, & did not come to Court. That this wo<sup>d</sup> include some persons of the first quality & estates in the kingdom, besides great numbers of others who were only misguided. And, as it was probable this paper might one time or other come before the Parliament, it might give rise to very disagreeable debates & questions there. The D. of Newcastle and Mr. Pelham fell in with my opinion; whereupon most of those expressions & epithets were at length struck out, & that remarkable paragraph entirely changed, and confined to the *advisers of the Prince, who fomented the division in the Royal Family, and thereby weakened the common interest of the whole, or words to that effect.*

“Before we parted, it was agreed that a meeting of the whole Cabinet Council should be held on Friday, the 9<sup>th</sup> of Sept<sup>r</sup>, at 10 o'clock in the morning, to consider of this weighty affair, & the l<sup>ds</sup> summoned the next morning (being Tuesday), to the end they might not want suff<sup>t</sup> notice.

“This day, Sir R. W. informed me of certain passages between the King & himself, & the Queen & the Prince,

of too high & secret a nature even to be trusted to this narrative; but from thence I found great reason to think that this unhappy difference between the King & the Queen & his R. H., turned upon some points of a more interesting & important nature than have hitherto appeared.

“On Friday the 9<sup>th</sup> Sept<sup>r</sup>, the Cabinet Council met, [D. of Devon, gone for Ireland, D. of Dorset, Namur., D. of Argyle, in Oxfordshire, L<sup>d</sup> President, in Sussex, E. of Scarborough, in Yorkshire, & not sufficiently recovered to attend business], at which were present the Archb<sup>p</sup> of Canterbury, L<sup>d</sup> Chancellor, L<sup>d</sup> Godolphin (Lord Privy-seal), Duke of Grafton (L<sup>d</sup> Chamberlain), D. of Richmond (Master of the Horse), Duke of Newcastle, Earl of Pembroke (Groom of the Stole), Earl of Ilay, L<sup>d</sup> Harrington, S<sup>r</sup> R. Walpole & S<sup>r</sup> Ch. Wager. S<sup>r</sup> R. W. opened the occasion of the meeting, & by the K<sup>g</sup>'s command, acquainted the Lords with the several causes of displeasure, which His Majesty had conceived ags<sup>t</sup> the Prince. That for these reasons his *Majesty was of opin<sup>n</sup> that the families must [or sho<sup>ld</sup>] be separated, & desired their L<sup>d</sup>ships advice as to the method of doing it.* That His Majesty had ordered him to prepare a dr<sup>t</sup> of a message to be sent to His R. H. for this purpose, w<sup>ch</sup> he had shewed the King the day before, & His Majesty had approved of; but S<sup>r</sup> R. took care to let the Lords know that the King tho<sup>t</sup> the style of the dr<sup>t</sup> full gentle enough. Then he read the several letters from the Prince to the King, and also those to the Queen, and remarked upon y<sup>e</sup> differences bet<sup>n</sup> y<sup>e</sup> sev<sup>l</sup> acc<sup>ts</sup> of y<sup>e</sup> fact, w<sup>ch</sup> the Prince gave to the Queen, as well as to my L<sup>d</sup> Harrington and himself the morning after the labour, (which last he read from some minutes, wherein both he & L<sup>d</sup> Harrington agreed,) & the narrative cont<sup>d</sup> in his first letter to the King. He

laid much stress on these letters, being only specious empty words, without any assurances of an alteration of conduct, & on the variances bet<sup>n</sup> the letters to the King and those to the Queen ; particularly that in the two last to her Majesty, the words *Your Majesty*, were never used, but *Madame* and *Vous* only. Lastly, he read the dr<sup>d</sup> of the message.

“ It appeared by the looks & expressions of all the Lords present, that they understood this, as they had reason, to be a communication of the King’s determined resolution & pleasure, who was undoubtedly master of his family ; & as he had been highly offended, was to judge for himself how far he would forgive or resent. They took it, according to the expression before mentioned, that their advice was asked as to the *method*, not the *measure*, & therefore set themselves to consider the draught, to which some few exceptions were taken. Two were made by myself, viz. in the first paragraph, to the words, *I cannot suffer myself to be imposed upon by them*, which seemed to me too harsh, & not adequate to the dignity of the persons concerned ; & to the word *rendezvous*, towards the end, as being too low & coarse. In the room of the first, I had before proposed to insert, *I cannot, consist<sup>l<sup>y</sup></sup> with my own honour and authority, suffer them to have any weight with me* ; but in this I could not prevail ; as to the term *rendezvous*, all the Lords concurring with me, it was left out, and the word *resort* was permitted to stand alone. The words, *you shall not reside in my palace*, were inserted on the proposal of the Archb<sup>p</sup>, in the room whereof my Lord Godolphin offered, *I think it not fit that you should reside in my palace*, of which I declared my approbation, as expressing the King’s opinion, & properly introductive of his subsequent command to leave St. James’s. But S<sup>r</sup> R. W.

assured us these words would not be thought strong enough.

“ Some few verbal alterations of little consequence were made, & so the message was agreed to, being in substance exactly the same as it had been laid before the Lords, & was submitted to the consideration of His Majesty, from whom it came to us.

“ The manner of sending it to y<sup>e</sup> Prince, was proposed to be by a message signed by y<sup>e</sup> King at y<sup>e</sup> topp with his name at length, & with y<sup>e</sup> two first letters, at y<sup>e</sup> bottom, after y<sup>e</sup> form of instructions ; & that an order, signed by His Majesty, sh<sup>d</sup> be delivered to y<sup>e</sup> persons charged with carry<sup>g</sup> it, reciting y<sup>e</sup> message *in hæc verba*, & commanding them to read it to, & leave it with H. R. H.

“ It was also agreed that copies of this message should be privately delivered to y<sup>e</sup> several foreign ministers residing at this court, & other copies sent to the King’s ministers residing abroad, as a *species facti*, or narrative of the King’s reasons for this proceeding with his son.

“ Other particulars were mentioned, & it seemed to be y<sup>e</sup> general sense of y<sup>e</sup> Lords that they sho<sup>d</sup> be regulated in like man<sup>r</sup> as upon y<sup>e</sup> *separation* in y<sup>e</sup> late reign ; but it was thought proper to leave them to y<sup>e</sup> personal direction of y<sup>e</sup> King himself, with<sup>t</sup> offering any particular advice thereupon.

“ On Saturday, Sept<sup>r</sup> 10<sup>th</sup>, this message, signed as before-mentioned, was sent H. R. H. by the D. of Grafton, D. of Richmond. & Earl of Pembroke, who had such a signed order as is above described for their justification.” \*

On Lord Hardwicke’s promotion to the Chancellorship, he selected Mr. Salter,—who was mentioned in the last chapter to have been appointed by him while he

\* Hardwicke MSS., Wimpole.

was Lord Chief Justice of England, as tutor to his lordship's eldest son,—to be his domestic chaplain, and presented him to a prebendal stall in Gloucester Cathedral. In 1740 he preferred him to a living. This gentleman afterwards married Miss Seeker, a relative of Lord Hardwicke's friend, Bishop Seeker; and at a later period of his life, the Lord Chancellor bestowed on him the Rectory of St. Bartholomew, near the Royal Exchange. The distinguished antiquary, Mr. Philip Carteret Webb, was made by Lord Hardwicke Secretary of Bankrupts in the Court of Chancery. Mr. Philip Yorke, the Chancellor's eldest son, was appointed purse-bearer to his lordship. One of the journals mentions that, immediately after Lord Hardwicke's appointment to the Chancellorship, he added ten Commissioners of Bankrupts to the forty made by the late Chancellor, and that he retained in office most of those nominated by Lord Talbot.

Among the first preferments in the Church by Lord Chancellor Hardwicke, was that of Mr. Thomas Wilson, the eldest son of the excellent and venerated Bishop of Sodor and Man, to the living of St. Stephen's, Walbrook, in the City of London; to which he was instituted on his father's birth-day, who then entered his 75th year.

The following notice of Lord Hardwicke's brother-in-law, Mr. Billingsley, is from one of the journals:—

“*Bristol, Sept. 24.*—Last week Mr. Billingsley, a near relation of the Right Hon. the Lord Chancellor, and lately an elder of a Dissenting congregation, was installed a Prebendary of the College of this City.”

Shortly after Lord Hardwicke obtained the Great Seal, he removed from his house in Arch Row, Lincoln's Inn Fields, to a large mansion in Great Ormonde Street,

called Powis House, which he continued to occupy during the whole of the period that he held the Chancellorship.

It was very soon after Lord Hardwicke's advancement to his new office, that an occurrence took place which has often been dwelt upon, with reference to his conduct here; and, in conjunction with a good deal of misrepresentation on the subject, some very severe and marked strictures upon this distinguished judge have been made.\* The following are the circumstances as mentioned in a biographical memoir of the poet Thomson, who had been appointed to a lucrative sinecure office by Lord Chancellor Talbot:—

“Thomson now lived in ease and plenty, and seems for a while to have suspended his poetry: but he was soon called back to labour by the death of the Chancellor, Lord Talbot, for his place then became vacant; and though the Lord Hardwicke delayed for some time to give it away, Thomson's bashfulness or pride, or some other motive perhaps not more laudable, withheld him from soliciting; and the new Chancellor would not give him what he would not ask.”†

Much might be said of Lord Hardwicke's neglect of merit and genius, in thus discarding a man who in leading his countrymen to the most delightful and healthful moral and intellectual pursuits, the contemplation and admiration of Nature, has greatly benefited mankind; and it might be urged that though it was through a feeling of pride in the poet in not petitioning for his pension that this was not regranting to him, yet that this feeling was at any rate honourable to his independence, and that the Chancellor himself ought to have been too proud to allow real talent to be neglected, and just claims on him to be overlooked, on so paltry a pretext.

\* *Vide* Lord Campbell's *Lives of the Chancellors*.

† *Johnson's Lives of the Poets*.

Here, however, we should bear in mind that the pension was granted by Lord Talbot to Thomson, not on account of his merit as a poet, but for the services he had rendered as tutor to his son. Thomson was in politics an ardent Tory, and employed himself in writing against the government of which Lord Hardwicke was a member; and the latter could not very consistently dispose of one of the first pieces of preferment which he had to give away, in the promotion of a political opponent; and by which he must, moreover, necessarily pass over a supporter of his party, among whom there were many men of talent and worth who stood in need of his patronage. Thomson shortly afterwards allied himself to the Prince of Wales, who was the most inveterate opponent of the government, and became a pensioner on the Prince's bounty. It seems, however, that mankind were more benefited by the neglect than by the patronage of the poet; for Thomson, when he became a pensioner, ceased to be a poet. He was too indolent to write, when the stimulus of want no longer operated; or, it may be, he deemed the circumstance of his being a pensioner of so unpoetical a nature as wholly to have extinguished the lyric spark. Johnson himself, in his biography of Thomson, makes no complaint at all of the treatment which his brother poet and brother Tory had received; but he blames him for not asking the Chancellor for the appointment, and says the latter was too proud to give it without this, and that he kept it open for some time to afford Thomson an opportunity of applying for it. It appears therefore that, although an opponent of the ministry, he might have obtained the pension by condescending to ask for it, by which it would be supposed he would also imply his resolution to cease to act in the capacity of a political writer, which

was perhaps somewhat out of character with that of a poet, who writes for the benefit of all mankind alike ; but this it seems he declined to do.

Probably, no class of men in this country are less liberally requited, according to their labours, than literary men of real merit ; and of these, perhaps, poets fare the worst of all. Their minds and time, nay health, and even life itself, they devote to their fellow-creatures, and to their true interests, the promotion of their intellectual, and moral, and social good. For this they despise the allurements of wealth and luxury, which ordinary professions, and even business avocations of a lower grade, would be pretty certain to bring them. They taste in reality the poverty and privation they so forcibly describe, and which they so feelingly contribute to guard others against. Owing to a barbarous conventional rule in this civilized age, they are in a great measure excluded from society, or at any rate are allowed no recognized place or station in it, who are at once its highest benefactors, and its greatest ornaments. By their limited means, they are but too often precluded from participating in those pleasures they so contribute to enhance in others ; and by the constant effort of mind and unremitting exertion which they undergo, they become debilitated and frail, both in person and intellect.

These men surely then are those who both stand most in need of, and are best entitled to, the bounty of the state. They are at once its most deserving members, and those to whom it owes the most. There are few with whose services it could so hardly dispense : and there are none whose efforts are so entirely devoted to the public weal, and to whom therefore a grant by the state, of the nature of that for a time given to Thomson, is in fact not a mere idle pension, but well-earned pay.

As the nation advances yet further in its career of civilization, it may be hoped that the truth of what I have propounded will not only be acknowledged, but acted upon : and it cannot be doubted that the encouragement to men of mind thus afforded, will be fully responded to by them.

One of the most important duties which devolves on the Lord Chancellor, is the appointment of proper persons to fill the office of Justice of the Peace, and the consequent removal of such as are unfit. At the time when Lord Hardwicke received the Great Seal, the condition of the country was, as we have already seen, such as to require the exertions and activity of magistrates of the greatest abilities, as well as of the strictest integrity. Some of them, however, especially in London and Westminster, which were the places most subject to the depredations and robberies then so common, seem to have been of a character quite in unison with that of the times, and were little if at all better than the evil-disposed persons on whose misdeeds they were appointed to be a check. A curious document relating to this subject is among Lord Hardwicke's papers, which appears to have been presented to him soon after he became Lord Chancellor. It is entitled, "A True Account of some Justices of the Peace ;" and serves to afford an extraordinary idea of the condition of the London magistracy at this time, even after making a liberal allowance for the exaggerations and over-statements contained in it.

"One Sax, a justice near Wapping, very poor and scandalous ; lately a prisoner in the King's Bench for debt ; now skulks about in blind alehouses for debt, about Tower Hill, and Wapping, and takes affidavits at a little alehouse near the Victualling Office.

"William Morris, or Morrice, formerly High Bailiff

of Westminster, and son-in-law to Bishop Atterbury. Whilst High Bailiff he acted in that office in a very vile and scandalous manner, taking yearly pensions of Gaming Houses & B—— Houses to remit their fines, when convicted at the Sessions. . . . He has put the parish of Kensington (where he lived) in a flame. He was lately prosecuted and convicted for tearing a leaf out of the parish book, and was fined by the Court of King's Bench, and he owned that the fine and charges came to betwixt three and four hundred pounds, and the parish laid out near £500 in the prosecuting him.

“Another Justice of the Peace that is very scandalous, is Ferdinando Springall, an old debauched man.”

The abominations and atrocities of this veteran malefactor are set forth at large in the document in question ; after which we are told that

“The information upon which the Lord Chief Justice granted his warrant contains many abominable particulars, and is now in the hands of the Lord Chief Justice's clerk, where it may be seen.

“Anthony Wroth, had formerly an estate in Suffolk, but has ruined himself by gaming. Was lately a prisoner in the Fleet for debt. Since he came out of prison, he has lived in several populous parts of the town most proper for a trading justice, and at last has opened a shop in Red Lyon Street, Clerkenwell, having hired a house of Justice Mitchell's, whose tool he is. The Justice uses the ground floor for his business ; the rest of the house his Worship lets out in lodgings, and a woman of very ill fame lodges one pair of stairs.”\*

Lord Hardwicke, before he became Lord Chancellor, was frequently consulted, as a friend, by the Marchioness of Annandale, respecting the affairs of her family, and

\* Hardwicke MSS., Wimpole.

those of her son, then a minor. From the superior acquirements and great talents of the Chancellor, the young nobleman was induced to apply to him for some directions about his education. This called forth the following remarks in a letter from Lord Hardwicke, in which that important subject is treated in a very masterly and comprehensive manner, more especially as regards the use and abuse of foreign travel.

“The important business of your education, seems chiefly to consist in three things;—your studies, your exercises, and your travells.

“In your *studies*, your first employment will of course be the learning of languages, *ancient & modern*. Without a competent skill in the former, you will want the inexpressible pleasure & advantage, that can only be drawn from those immortal patterns of nervous, beautiful writing, & virtuous action, which Greece & Rome have left us; & without the latter, a man of quality must find himself frequently at a loss becomingly to act many parts both in public & private life, to which his birth & rank do naturally call him. As you proceed further, permit me to recommend *mathematicks* to your particular favour. It is of infinite service in a variety of affairs; but there is one great use of it, which I remember my Lord Bacon somewhere mentions, that it tends above all things to fix the attention of youth. ‘For in demonstrations, if a man’s mind wanders never so little, he must begin again.’

“The study of the *Roman civil law*, is what every true friend of your Lordship wo<sup>d</sup> most earnestly wish you to pursue. ’Tis the groundwork of the law of that country in which your titles, & paternall estate entitle you to a considerable share of influence;\* &, in cases

\* Scotland.

wherein their municipall laws have made no speciall provision, 'tis their rule of judging. Believe me, the benefits you will derive from a superior knowledge of this science are not to be described within the compass of a letter; and, as your Lordship may probably one day have a share in representing the Scotch nobility in Parliament, your country will by this means find you much the better qualified for their service, as well as your own.

"I shall be in danger of going further out of my depth, if I attempt to say much about your *exercises*. They require judg<sup>mt</sup> in choosing, & many of them are highly conducive to strengthening the constitution, & forming a graceful behaviour. It seems to be a fault of the present age, to neglect the manly & warlike exercises, & to prefer those which are soft & effeminate. The former are certainly a necessary part of the education of a man of quality, not to be laid aside as soon as learnt, but to be made a habit for life. Hence you will be rendered more apt for military fatigue & discipline, if ever the cause of your Prince & country shall require you to endure it; & one cannot help observing that it wou<sup>d</sup> be much for the honour of the nobility, as well as the security of this kingdom, if more even of those who do not think fit to make war their trade wou<sup>d</sup>, however, qualify themselves to perform in that honourable service.

"To these I presume *travelling* will succeed, not only from the reason of the thing, but the fashion of the times; & it were much to be wished that being in the fashion was not, for the most part, the sole aim in it. It is undoubtedly in itself a noble part of instruction, as it affords an opportunity of becoming acquainted with the constitutions & interests of foreign countreys, the courts of their princes, the genius, trade, & general pursuits of their people. But, as things are now managed,

what is often substituted in the room of these most useful inquiries? Nothing but the infection of their vices & luxury; their arts of dressing themselves & their victuals; &, consequently, the acquisition of a false, vitiated taste in both. To intimate one or two of the main causes of this unhappy abuse, may serve just to point out the way to avoid it. One fundamentall error is travelling too early. The mind of a young man wants to be fitted & prepared for this kind of cultivation; &, until it is properly opened by study & learning, he will want light to see & observe, as well as knowledge to apply the facts & occurrences met with in foreign countreys. Without this foundation, a boy may be carried to see one of those idle shows called moving pictures, or the French court in waxworks, with almost as great advantage, & with much more innocence.

“In former times, the people of Britain, who travelled, were observed to return home with their affections more strongly engaged towards the well-tempered constitution & liberty of their own country, from having observed the misery resulting from the arbitrary governments abroad. This was a happy effect, & most desirable to be continued: but, by an unlucky reverse, it sometimes happens that, from being taught to like the fashions & manners of foreign countreys, people are led to have no aversion to their politicall institutions, & their methods of exercising civil power.

“The Protestant religion being established here, is one great security, not only of our religious, but also of our civil liberty. That ocular demonstration of the gross superstitions & absurdities of Popery, which travelling furnishes, was formerly tho<sup>t</sup> to fix the mind in a more firm attachment to the former, & abhorrence of the latter. It were much to be wished that this observation

would constantly hold ; but I fear the case is now sometimes otherwise, with this further ill consequence, that many of our young men, by a long interruption of the exercise of their own religion, become absolutely indifferent to all.

“ In what I have said, I desire to be understood not to advise your Lordship against travelling. My view is far otherwise. It is only to lay before you what appears to me, informed as I am, to be the modern abuses of it, that, by avoiding those, you may be in a condition to make good use of that which is truly usefull in itself.”\*

The hopes that had been formed of this young nobleman were, however, doomed to be early blighted by a severe illness which befel him, and by which his understanding was affected. Mr. David Hume, the celebrated writer, was, during his youth, intrusted with the charge of him.

Pursuant to the resolution of the House of Lords, mentioned before, the Scotch judges appeared at the bar of that house in their robes, and were there interrogated respecting the late riotous proceedings in Edinburgh. A bill was brought in to disable Alexander Wilson, Esq., Lord Provost of Edinburgh, from enjoying any office or place of magistracy in the city of Edinburgh, or elsewhere in Great Britain ; for imprisoning the said Alexander Wilson ; for abolishing the guard of that city ; and for taking away the gates of the Nertherbow port, so as to open a communication between the city and suburbs, in which the King's troops were quartered. This measure was very strongly opposed by the Duke of Argyle. Lord Hardwicke spoke in favour of the bill, but as there are no points of general permanent interest, or constitutional principle involved in the speech, I have not extracted it

\* Hardwicke MSS., Wimpole.

here at length. His remark respecting the good services of the town of Edinburgh, that "the merit of ancestors in a former age, can never atone for the degeneracy of their posterity in the present;" and the following, on party government, with which he concluded his speech, are well worth recording, and are characteristic of his philosophical and reflective style.

"Some think to govern nations by a party, without any view to the good of government in general; but it is a pitiful way of governing. A man who acts zealously for the good of his country, will make the rule of his conduct the interest of the whole; which is as much supported by the maxims of punishing open violations of, as rewarding particular services done to governments in general. Whoever, I say, acts in this manner, acts for the good of the whole."

The Duke of Argyle complained that he was "plainly pointed at in the concluding part of the speech of the noble lord who spoke last," and declared that he hoped he had mistaken Lord Hardwicke's design, "which," said the Duke, "I have the more reason to hope I have done, because I have never failed to express the greatest friendship, I may say love and esteem, for his person; as I have always entertained the highest respect for his station and character." Time was when he, the Duke of Argyle, might have been a minister, but he had declined it. He had never ran races of popularity, or engaged in jobs, but he opposed that bill as contrary to liberty.

Lord Hardwicke replied, that he had observed with the greatest concern that the noble lord who spoke last had mistaken his meaning; that he entertained the highest opinion of that noble lord's candour, integrity, and abilities, and that it never was his intention to insinuate the least thing to the disadvantage either of the noble

peer or any of his relations. That the words which had given the noble peer offence were only to be understood of what had been practised in former times, and what possibly might be in the present; but that the noble lord was the last man in the world to whom he would have them applied.\*

During the investigation which took place respecting the proceedings on Porteous's trial, it plainly appeared that he was fully justified, from the principles of self-defence, in firing upon the mob, and that the reprieve granted him by the Queen was founded in law and justice. Some of the peers proposed to declare the verdict of the jury against him erroneous, but this was opposed by Lord Chancellor Hardwicke and the Earl of Ilay, and no motion was made on the subject.

Lord Ilay, in a letter to Sir Robert Walpole, says :—

“ It is a great concern to me to find it so difficult hitherto to make discoveries of the murderers of Capt<sup>n</sup> Porteous. . . . The secret patrons of the mob seem to be as busy in preparing false evidence to acquit the criminals, as we all can be to bring them to justice. They that are in prison have already in their mouths the names of persons who, they say, will swear to their innocence ; that is, the accomplices in the murder will easily perjure themselves to save their friends. The most shocking circumstance is, that it plainly appears the high-flyers of our Scotch Church have made this infamous murder a point of conscience. One of the actors went straight away to a country church, where the sacrament was given to a vast crowd of people, as the fashion is here, and there boasted of what he had done. All the lower rank of the people, who have distinguished them-

\* Hansard's Parl. Hist.

selves by pretences to a superior sanctity, speak of this murder as the hand of God doing justice ; and my endeavours to punish murderers are called grievous persecutions.”

After some alterations and amendments made by the House of Commons, the bill was passed, and received the royal assent.

Counsel were heard against the bill ; and on this occasion it was that Mr. Murray, afterwards the celebrated Lord Mansfield, first distinguished himself, and gave proof of the powers he possessed. A note of his argument before the House of Lords, as taken down by Lord Hardwicke, may not be uninteresting to the professional reader.

“ *Mr. Murray, pro Wilson.*

“ No pretence y<sup>t</sup> what A. W. [Wilson] did, proceeded from any malignity of heart.

“ Three instances of neglect.

“ 1. Of precautions for preventing this riot.

“ 2. Of suppressing it, and preventing the murder, when attempt made.

“ 3. Of apprehending, or bringing to justice any of y<sup>e</sup> offenders.

“ Amazed to hear any person insist on y<sup>e</sup> want of a letter to Gen<sup>l</sup> Moyle.

“ The troops had no more to do in it than any other subject ; nobody can insist on a written order to assist the civil magistrate.

“ Popham’s case of arm<sup>“</sup>.” \*

On Mr. Wilson’s return to Edinburgh, the public journals of this time state that there were in that city

“ Great rejoicings, ringing of bells, and bonfires. At four in the after-

\* Hardwicke MSS., Winpole.

noon, the music bells began to play ; at seven the great bells were set ringing, and continued till nine. Several of the citizens went to meet him, intending to march before him through the city ; but, according to his wonted modesty, he declined any such ostentation, stepped out of his coach, and came in by Bristol port."

In *Maty's Life of Lord Chesterfield*, it is stated, in allusion to the debate in the Lords' on the Porteous riots, that

"The manly sense, and humane disposition of Lord Hardwicke, prevented a too violent stretch of power. That great magistrate (who, though constantly attached to the court, and most commonly engaged in parliamentary altercations with Lord Chesterfield, was, according to his Lordship's judgment, not only an agreeable and eloquent speaker, but a most clear and instructive reasoner,) maintained on this occasion, as well as on many others, the first prerogative of the crown, without extending it to the oppression of the people."

Mr. Duncan Forbes, the celebrated Lord President of the Session in Scotland, wrote a letter to Lord Hardwicke on the 27th of December in this year, on the condition and regulation of the Bar in Scotland, and the introduction into that country of some of the English laws.

To this letter, Lord Chancellor Hardwicke replied in the following terms :—

*Carshalton, Janu 6, 1737.\**

"MY LORD,—Your obliging letter found me at this place, rustivating for a few days, in order to be the better fortified against a session of Parliament. It gave me much pleasure, as it brought proofs of my not being forgotten by an old friend, whom I most highly esteem ; and something the more, as it flattered my vanity a little, in making me believe that I was not altogether mistaken in part of the consideration which you permitted me to lay before you. Your Lordship perceives from hence,

that I can sometimes be on the same side with a Scotch mob,—*interdum populus rectum videt*; and in this instance I think them right, when they forced themselves on your talents and perseverance, and reckoned on y<sup>e</sup> probable consequences of a good beginning. Reformation is most difficult at first, but when some advances are happily made, the effects being felt, afford a sensible evidence, w<sup>ch</sup> operates more strongly than any previous speculation, and must create a shame of relapsing.

“I rejoice much to hear that your Lordship hath turned your thoughts towards y<sup>e</sup> improvement of y<sup>e</sup> laws of y<sup>r</sup> country. Such hands as yours are fitted for such undertakings; whereas others, not so well-informed, nor so well-intentioned, often spoil what they pretend to amend. If a scheme of this kind were sent up, you might depend on my best endeavours for y<sup>r</sup> service; for however I may of late have been thought of, I assure you, with the greatest truth, that there is not a man in y<sup>e</sup> United Kingdom who considers it as *one* more y<sup>n</sup> I do, & upon y<sup>i</sup> principle w<sup>d</sup> more zealously promote y<sup>e</sup> true interest & welfare of Scotland. But as to y<sup>e</sup> bill passing *without alterations*, your Lordship, who had long experience of our Parliament genius, of y<sup>e</sup> disposition to amend y<sup>e</sup> English laws, & of some attempts relating to your own, can judge as well as I do of the probability of such an event. It would be impertinent to put you in mind of another matter;—that unless some of y<sup>r</sup> countrymen here are taken into y<sup>e</sup> orig<sup>l</sup> project, many obstacles may arise.

“The recovery of your people from their ferment abt<sup>t</sup> the Edinburgh bill, is a good symptom. I hope they also are, or soon will be so fro’ y<sup>t</sup> abt<sup>t</sup> reading y<sup>e</sup> other act of Parl<sup>t</sup> in the churches; for, whatever becomes of y<sup>e</sup> law, your ecclesiastical affairs are too sacred for me to meddle

with. As to those of y<sup>e</sup> manufactures, they have my best wishes, & shall never want any assistance in my power.

“ I hope that becoming concern which you say shews itself in y<sup>r</sup> part of y<sup>e</sup> kingdom for y<sup>e</sup> Queen’s death, may be taken as an evidence of their affection to y<sup>e</sup> King, his family, & government. As y<sup>e</sup> blessing of her life was public & universal, y<sup>e</sup> misfortune of her loss must be equally extensive.

“ After mentioning this subject, I can add nothing more, but y<sup>t</sup> I am, with perfect truth & respect, &c.,

“ HARDWICKE.”

“ I hope Mr. Rosse remembered to return my thanks & compliments for your kind present, w<sup>ch</sup> did credit to

Towards the close of the year 1737, the King, and indeed the whole nation, sustained a great loss in the death of Queen Caroline, referred to in the foregoing letter. She was one of the most virtuous and accomplished Princesses who have ever adorned the page of history. Her health had for some time been visibly declining, but the disorder which was the immediate cause of her death was only of a few days’ duration, and the existence of which, from a false delicacy, she was induced to conceal from her physicians. The King manifested the greatest affection for her, and watched incessantly by her bedside until she expired, and for a considerable period after her death was wholly inconsolable.

A conspicuous part in the character of Queen Caroline was her great patronage of learned men. She distinguished Clarke, Butler, Sherlock, Secker, and Pearce,—most, if not all of whom were friends of, and promoted by Lord Chancellor Hardwicke,—with peculiar marks of regard

The esteem manifested by this illustrious lady towards Lord Hardwicke has already been mentioned ; and with him it appears that she had occasionally conferences respecting the promotion of some of those meritorious persons, her patronage of whom has peculiarly contributed to render her name venerated. Indeed, while she was Princess of Wales, and Lord Hardwicke, then Sir P. Yorke, was at the bar, this friendly feeling was in existence ; and we find the following letter from Mrs. Clayton, one of the Ladies of the Bedchamber, to Sir P. Yorke, with a message from the Queen, reminding him of a communication she made to him while Princess of Wales, and asking him to render his professional services to a gentleman in the favour of the Royal Family.

“ S<sup>r</sup>,\*—The Queen has commanded me to put you in mind that, in the late King’s time, Her Majesty recommended to you the cause of a gentleman well known to this Royal Family, whose name I have forgot. He is a Foreiner, & now dos duty in Gen. Will’s regiment. His cause is coming on soon, & Her Majesty has commanded me to tell you, she desires you will take all the care of him that is possible.

“ I am,

“ Your most humble Servant,

“ E. CLAYTON.”

On the 7th of December, the Lord Chancellor received a note from Lord North and Guildford, stating that, as he had business of some consequence to communicate, he begged Lord Hardwicke to fix an hour for waiting upon him. Lord North accordingly had an interview with the Lord Chancellor and the Lord President, at the time

\* Hardwicke MSS., Winnpole.

appointed, when the letter contained in the following memorial of what took place on that occasion, was presented to them from the Prince of Wales, claiming to attend as chief mourner at his mother's funeral, and citing as a precedent the case there mentioned.

“The Lord Chancellor & L<sup>d</sup> President having had the honour to receive the following message in writing, from His R. H. the Prince, viz. :—

“The Prince being credibly informed that King Charles y<sup>e</sup> first, when Prince of Wales, was the chief mourner at his mother, Queen Ann's funeral, thinks it his duty to offer himself on the present occasion.

“And therefore, desires the L<sup>d</sup> Chancellor, & L<sup>d</sup> President to acquaint His Majesty with his readiness to show any mark of duty & respect to the memory of Her late Majesty.’

“And the L<sup>d</sup> North having at the same time informed them that H. R. H. left it entirely to their discretion, whether, upon considering the circumstances of this case, they wo<sup>d</sup> think it proper to lay the said message before His Maj<sup>ty</sup> or not ; but that, if they sh<sup>d</sup> be of opinion not to lay the same before His Maj<sup>ty</sup>, the Prince desired that it might be considered by y<sup>e</sup> King's serv<sup>ts</sup>.

“The L<sup>d</sup> Chancellor & L<sup>d</sup> President desire the Lord North humbly to acquaint His R. H. y<sup>t</sup> His Maj<sup>ty</sup> had, several days before the s<sup>d</sup> message was delivered to them, declared His Royal pleasure that Her R. H. the Princess Amelie sh<sup>d</sup> be chief mourner at Her late Majesty's funeral, which had been signified to the committee of council appointed to consider of the said funeral, & thereupon an order was made for settling the ceremonial accordingly ; which order had received His Majesty's Royal approbation before the s<sup>d</sup> message was delivered ; upon consideration wh<sup>o</sup>cof, & of all the circumstances attend-

ing the present melancholy occasion, as well as of the latitude which His R. H. was pleased to leave to them, they thought it proper that the same should previously be considered by His Majesty's serv<sup>ts</sup>; that they did therefore consider of the s<sup>d</sup> message jointly with others, His Majesty's servants, who, together with the L<sup>d</sup> Chancellor & Lord President, are humbly of opinion, upon weighing all the circumstances before mentioned, that it is most advisable not to lay the s<sup>d</sup> message before His Majesty."\*

The following memorandum is, with the one preceding, in the handwriting of Lord Chancellor Hardwicke :—

“ *December 9, 1737.*—The answer written on the other side having, on the 8<sup>th</sup> December, in the evening, been, on consideration of the Prince's message, approved & agreed to by L<sup>d</sup> Archbishop, L<sup>d</sup> Chancellor, L<sup>d</sup> President, L<sup>d</sup> Steward, D. of Richmond, D. of Newcastle, L<sup>d</sup> Pembroke, L<sup>d</sup> Scarborough, L<sup>d</sup> Hay, S<sup>r</sup> Rob. Walpole, Sir Cha. Wager, 11 of y<sup>e</sup> Lords of y<sup>e</sup> Cabinet Council, being y<sup>e</sup> whole number that met (after a summons of y<sup>e</sup><sup>m</sup> all) was on y<sup>e</sup> 9 Decr. betw<sup>n</sup> 2 & 3 o'clock in y<sup>e</sup> afternoon, deliver<sup>d</sup> by me to y<sup>e</sup> L<sup>d</sup> North, at L<sup>d</sup> President's house in his presence, & with his express consent.

“ Before it was delivered, I read it over twice to Lord North in y<sup>e</sup> L<sup>d</sup> President's presence, & particularly asked, L<sup>d</sup> North whether what is therein mentioned to have been said by his Lordship to us, as from the Prince, was truly recited; to which he answered, that it was exactly right.

“ After the answer was delivered, both L<sup>d</sup> President & I did in conversation acquaint L<sup>d</sup> North y<sup>t</sup> the Prince had been misinformed as to y<sup>e</sup> fact of King Cha. I. being ch. mourner at his mother's funeral, for that the Countess

of Arundell was ch. mourner; but that we had omitted to insert y<sup>t</sup> circumstance in y<sup>e</sup> written answer, out of respect to His R. H.”\*

During the month of June, in this year, the Duke of Newcastle, whose intimacy with Lord Hardwicke seemed to increase as they were brought closer together by official connection, was chosen High Steward of the University of Cambridge, in the room of the Earl of Anglesey. .

Dr. Herring, Dean of Rochester, who had just been appointed to fill the see of Bangor, wrote a letter to Lord Chancellor Hardwicke, enclosing a written copy of the last sermon delivered by him as Preacher at Lincoln’s Inn, for the perusal of Lady Hardwicke. His regard for the Chancellor, and his acknowledgment of the latter’s favour towards him, especially in his present advancement, ought to be remembered by those who have accused Lord Hardwicke of neglecting generally to prefer clergymen of merit and learning, and of confining his patronage to the scions of noble families, in this profession. This able prelate in after years gave proof of his superior discernment and correct taste, by his due appreciation of the literary efforts of Mr. David Hume, in his history of England. While the public in general underrated the work, Herring from the first perceived its excellence, and exerted himself to encourage the author in his undertaking. The bishop says in his letter to Lord Chancellor Hardwicke,—

“ Be pleased, my most honoured Lord, to accept from me y<sup>e</sup> warmest thanks of a most grateful mind, for all your undeserved favour to me. I shall remember them to my latest breath, with a quick sensibility that y<sup>e</sup> happiness & honour of my life, whatever it is, or may be,

has been & will be owing to y<sup>e</sup> distinction w<sup>th</sup> w<sup>ch</sup> you have been pleased to treat me, & to y<sup>e</sup> assistance by w<sup>ch</sup> you have rais<sup>d</sup> me ; & as to this world, whatever longer time it may please God to call on me in it, I have no other solicitude upon my mind, but how to act in such a manner as may become y<sup>e</sup> station I am going to be placed in, & to do as little discredit, as may be, to your Lordship's recommendation of me.

“ I presume your Lordsp. has now got your young family about you. I shall be glad to be recommended to them, & much wish myself in y<sup>e</sup> midst of them.” \*

Lord Hardwicke, in his reply to the Bishop elect of Bangor, stated as follows. It was probably written from Carshalton.

“ DEAR SIR,†—OR by what other name must I call you ? But I choose to address you by a style which our long friendship has made familiar to me ; & besides, I know you love rather to shun new titles, than to be beforehand in receiving them. This is always the disposition of minds formed like yours, of which I have many proofs, as well as the last in your most obliging letter. The undeserved acknowledgments you are pleased to make of my weak, tho' sincere endeavours in your service, can proceed only from y<sup>e</sup> greatest modesty ; for, if you wou<sup>d</sup> bear it, I cou<sup>d</sup> inform you of much juster causes to which to ascribe your present success ; the earnest, as I hope for y<sup>e</sup> sake of virtue & mankind, of still greater honour. I will be vain enough to avow that I feel a real comfort in my own breast, in having cast in my mite towards giving to the Church a worthy and able pastor, who will religiously & vigorously defend the cause of revealed religion, with<sup>t</sup> injuring that of natural ; & not, by giving up or depre-

\* H. d. wicke MSS., Wimpole.

† Ibid.

ciating the latter, lay a sandy foundation for the former. The mention of this subject, puts me in mind to return you my wife's thanks for the favour of your notes, in asking which you must allow female curiosity as her excuse. They arrived on Saturday, just as I was getting into my coach to come to this place, so that I had not so much as the pleasure of peeping into them.

“ Mr. Salter & Philly are my only companions, & all of us full of wishes that you were near enough to make one. This is the only circumstance in y<sup>r</sup> new situation disagreeable to me, that it will carry you further fro' Carshalton than Bletchingley; but I trust you will do y<sup>r</sup> best to make us amends.”

The celebrated Sarah, Duchess of Marlborough, whose admiration of Lord Hardwicke's conduct as Chief Justice has already been mentioned, was now an occasional visitor at the Chancellor's, and corresponded sometimes with Lady Hardwicke. In the letter before us, addressed to the latter, she alludes to a Chancery suit in which she was interested, then pending before the Lord Chancellor, as a reason for not calling at his house. The testimony borne by this gifted lady, to the agreeable conversation and company of Lord and Lady Hardwicke, is confirmed by the report of others, who were in the habit of having intercourse with them.

“ *January the 23rd, 1738,\**

*Tuesday Morning.*

“ MADAM,—I was very sorry that anything sho<sup>d</sup> happen to hinder me of the pleasure of seeing you last night, when you was so good as to give yourself the trouble of coming here. And I am very sensible of the great favour

my Ld. Chancellor does me in the message you left. I was surprised at his thinking of me at all: and as he had no call to do it, if you had not left the message you did, I shou<sup>d</sup> have concluded with reason that his business is so very great that 'tis impossible for him to have so much time in his power as to come to me. And I am only sorry that he has not perfect health. Now I am writing, I am tempted to tell you my reason why I don't wait upon you, as I have always inclinations to do; and, as I cou<sup>d</sup> do, since you give me leave to sit in a chair. For I do solemnly protest, that without any by-end, nobody's conversation is so pleasing to me as yours, and my L<sup>d</sup> Chancellor's. But I consider, as I have a cause of great consequence coming before him, tho' nobody can be so simple as to imagine that I could influence his Lordship, yet I wou<sup>d</sup> give no handle to foolish and ill people to spread falsities of one. In which the generality of the town have always been very fruitful. I don't know whether this be good reasoning or not, but 'tis the real truth, Madame, of my denying myself the pleasure of waiting upon you, or of making any enquiries, except one, which I cou<sup>d</sup> not help, upon being much concerned at hearing that my Lord Chancellor went ill out of court. As soon as this trial is over, I reckon my restraint will be at an end, & I may follow my inclinations as much as will suit your convenience. For, tho' your business is of another sort, I reckon you are as fully employed as your Lord. At present I am very easy, except a tormenting pain of itching, which hinders me from sleeping in the night. As to what some people wo<sup>d</sup> call a great trouble, which my ungracefull and very foolish grandson, by the advice of honest Mr. Lamb, has given me. I think I am obliged to him for it. Because I am very certain that 'twill appear in Chancery, that never

any trust before was so carefully & disinterestedly perform'd. And that I have acted in such a manner, that it wou<sup>d</sup> have been vanity in me to have made it publick, if by the Duke of Marlboro's folly I had not been forced to do it. And I am assured by the best judges that he can hurt nobody but himself. I beg pardon for this trouble, & am, with the greatest truth,

“ Madam,

“ Your Ladiship's

“ Most faithful and most obliged humble serv<sup>t</sup>,

“ S. MARLBOROUGH.”

On the 9th of March, 1738, a very important debate took place in the House of Lords respecting the reduction of the army. Lord Carteret, after demonstrating the improbability of a war between this country and any other, against which a land army could be of any service, proceeded to examine the domestic state of the nation, and contended that whatever discontents there might be in the kingdom, there was little or no disaffection, and no seeming design to overturn or disturb the government. In answer to an argument that such a number of regular forces was necessary for preventing or quelling tumults, and for enabling the civil magistrate to execute the laws of his country, he expressed his hope that he should never see the nation reduced to such unfortunate circumstances. He said, a law which the civil power was unable to execute must either be in itself oppressive, or such a one as afforded a handle for oppression. He adverted also to the great increase of the national expenses, especially since the Revolution.

The Earl of Chesterfield declared that slavery and arbitrary power were the certain consequences of keeping

up a standing army for any number of years. A free people might be enslaved through this means by degrees, by becoming accustomed to it, which would be aided also by the arts of corruption. The number and strength of the army had gone on increasing, and had several times been augmented under various pretences. He therefore concluded that slavery, under the disguise of an army for protecting the liberties of the people, was creeping in on them by degrees. If no reduction should be made, he declared he should expect in a few years to hear some minister, or favourite of a minister, terrifying the House with imaginary plots and invasions, and making the tour of Europe in search of possible dangers, to show the necessity of keeping up a mercenary standing army three times as numerous as the present.

The Lord Chancellor Hardwicke addressed the House towards the close of the debate, on the opposite side of the question. It is highly interesting and important to ascertain the sentiments of one who was so great a constitutional lawyer, on a constitutional question of such magnitude as this. His speech is well worthy of perusal, on account of the principles and arguments propounded in it, on the subjects of popular tumults and discontents, and the mode in which he descants on their origin, causes, and nature; and his opinion (indirectly expressed indeed) on the uses and expediency of a standing army, and when such a force is to be allowed, is deserving of the attention of every political student. Many of the reasonings contained in this address are applicable to all similar occasions, on which account it ought to be recorded and preserved. The constitutional theory here laid down respecting the proper regulation of a standing army should especially be noticed.

The following comprise only a portion of the observations which on this occasion he made :—

“ My lords, if we are certain that all our present discontents proceeded from our keeping up an army, and that all those that now appear discontented would be satisfied, and would be sincerely reconciled with and obedient to our government for the future, I should readily agree to the reduction proposed. But the contrary, I think, is manifest. It is not from keeping up an army that our present discontents proceed. It is not with our government only, but with our whole legislature, that the meaner sort of people appear dissatisfied. The greatest discontents that have appeared, the most frequent riots that have happened, have been occasioned by an act of the whole legislature ; and one of the best acts that was ever made, one of the most necessary for preserving both the health and morals of the people. Our discontents and riots occasioned by the erecting of turnpikes are of the same nature. They do not proceed from any measures taken by the government only, but from measures that have been approved of by the whole legislature.

“ It is only among the very dregs of our people that these discontents, and this spirit of mobbing and rioting prevail ; and if you allow the dregs of your people to prescribe to or control the legislative authority of the kingdom, in opposition to what is approved of by all those of a superior rank, not only our present establishment, but government itself, must be at an end. Anarchy and confusion must ensue, and from that anarchy, as has been once our fate already, one of the worst sort of tyrannies will certainly spring up.

“ These discontents, it is true, may all of them be heightened by the army we keep up at present ; but how are they heightened, my lords ? The discontented are angry with our army, because, by means of our army, our government is enabled to prevent it being in their power to overturn our religion and constitution, by introducing Popery and slavery. The seditions are angry with the army, because, by means of the army, our government is enabled to prevent it being in their power to spread war, bloodshed, and desolation over the face of their country ; and the loose and abandoned are angry with our army, because, by means of the army, our government is enabled to prevent its being in their power to come easily at those pernicious liquors, which give a new spring to all their vicious appetites, and which make it easy for them to draw multitudes into the same lewd and debauched course of life.

“ The officers' commissions must always be, in my opinion, at the

King's absolute disposal ; for it is necessary, both for the support of our government, and for preserving regularity and discipline in the army, to give the King a greater power over the officers of our army, than he has over our judges or clergy. There are many little pieces of oppression and injustice, which officers and soldiers might be guilty of in their quarters, and otherwise, which it is impossible to punish or provide against by any human laws, civil or military. There are many little pieces of neglect, or misbehaviour in duty, which it is impossible to prevent by any law, or to punish even by a court martial. There is no way of tying officers down to that behaviour, diligence, and regularity, which is necessary both for the quiet of the people and the perfection of military discipline, but by making the preservation of their commissions, as well as their preferment in the army, depend upon the whole tenour of their conduct and behaviour ; and there is no way of doing this, but by leaving it entirely in the King's power to determine, by the advice of his generals and superior officers, what gentlemen deserve to be preferred, and what officers ought to be cashiered. I am fully convinced, my lords, that the giving our officers a legal title to their commissions during life, or even establishing it as a rule that no officer could be turned out of his commission but by a court martial, would be the cause of great oppression upon the people, and would put an end to all regularity and discipline in the army ; and I cannot but admire that those who for some years have pretended to think an annual army so dangerous to the liberties of the people, should ever be for establishing an army for life, which would probably be the case if the commissions of our officers were all declared by law to be for life. I shall readily grant that this would take off a great deal of their dependence upon the Crown, and might, perhaps, make it more difficult for a minister to have any undue influence, either in Parliament or at elections ; but it would, I am afraid, render our army so mutinous, and would make it so difficult and tedious to get an officer dismissed, that the army would, I believe, in a short time begin to prescribe laws both to the Crown and to the Parliament." \*

The question was then put upon Lord Carteret's motion, and carried in the negative ;—contents 35, not contents 99.

A warm discussion took place in the House of Lords on the 2nd of May, respecting the depredations of the

Spaniards. The Lord Chancellor spoke on this occasion, and his oration is worthy of attention, divested of its importance as a political argument for this particular debate, on account of the way in which he incidentally alluded to a very difficult and interesting topic connected with the law of nations—that of the right of search in time of peace. That portion of his address only which treats on this subject I shall therefore here extract.

“ I humbly conceive that there are certain cases wherein any nation, though at peace with another, may, by the law of nations, enter and search the ships of the other. Nor can the nation to which the ship so searched belongs deem such a search a violation either of the law of nations or of particular treaties in force. I think, my Lords, it never was disputed, but that by the law of nations the ships of one people at peace with another might be searched, in case that other people was carrying arms or provisions of war to a nation then at war with that other nation. Now, my Lords, I am afraid that our declaring the searching of all ships belonging to Great Britain to be an infraction and violation of the treaty subsisting betwixt the Spaniards and us, will be very justly looked upon by the court of Spain as precluding them of the rights of a search to which they are entitled by the laws of nations; and may produce a misunderstanding betwixt us, which we would all heartily wish to avoid, and could not be attended with very honourable circumstances on our part.”\*

The following notice from one of the public journals contains the announcement of the birth of a Prince, who in after years occupied the throne of these realms as King George the Third, and of whose career and character I shall have much to say.

“ *Wednesday, May 24th, 1738.*—This morning, between six and seven, the Princess of Wales was happily delivered of a Prince at Norfolk House, St. James’s Square, the Archbishop of Canterbury being present. At five, Lord Baltimore was sent to Kensington to ac-

quaint His Majesty that the Princess was in labour, and about eight, the Marquis of Carnarvon was sent in state, to notify to His Majesty Her Royal Highness's delivery, and the good state the Princess and her son were in.

“ *Friday 26th.*—The Lord Mayor, Recorder, several Aldermen, and the Sheriffs waited on His Majesty, with their compliments of congratulation on the birth of the young Prince, and were most graciously received, and had the honour to kiss His Majesty's hand.”

The letter to Lord Chancellor Hardwicke which follows, and which is from that excellent, able, and venerated prelate, Dr. Thomas Sherlock, Bishop of Salisbury, and Master of the Temple, is very important, on account of the testimony borne by such a man to Lord Hardwicke's zeal for the interests of religion and virtue; and as an additional attestation to the propriety of the selections made by the Chancellor, in his distribution of his Church patronage.

“ *Salum, Aug. 8, 1738.\**

“ MY LORD,—I am extremely obliged to your Lordship, for not only excusing the trouble I gave you, but for considering it in a light, in which nothing but your own great candour & goodness cou<sup>d</sup> place it.

“ The people of Reading will have great reason to pray for your Lordship, for the care you have had of them in this instance; & the little good I am able to doe, will be done with greater cheerfulness & better hope, by observing the serious attention to the concerns of religion in one in your Lordship's exalted station. .

“ I am very happy in the choice your Lordship has made of the Dean of Carlisle; & know he deserves the good opinion you have of him; & I doubt not but that

\* Hardwicke MSS., Wimpole.

his influence & example will be of great service, not only among the people, but the clergy of the neighbourhood.

“ I shall quit this house to the workmen, who are to repair, the last week of this month ; w<sup>ch</sup> I mention, to save the Dean a journey to Salisbury for institution ; wh<sup>ch</sup> he may have with greater ease in town.

“ I am, my Lord, with the greatest sense of your goodness to me,

“ Your Lordship’s

“ Most obedient humble servant,

“ THO. SARUM.”

On the 17th of August, 1738, died the Right Hon. Sir Joseph Jekyll, Knight, Master of the Rolls. He was an uncle of Lady Hardwicke, and lived on terms of strict intimacy with both her and the Chancellor. Sir J. Jekyll was for many years an active and strictly independent member of the House of Commons. On the occasion of the impeachment of the Earl of Oxford by the House of Commons in 1715, a warm debate arose on the 11th article, by which the Earl was charged with having advised the French King in what way Tournay might be gained from the States General. On the question being put whether this article amounted to high treason, Sir Robert Raymond maintained the negative, and was supported not only by Sir William Wyndham and the Tories, but also by Sir Joseph Jekyll ; this honest patriot, as Smollett calls him, declaring that it was ever his principle to do justice to every body, from the highest to the lowest ; and that it was the duty of an honest man never to act by a spirit of party. He said, he hoped he might pretend to have some knowledge of the laws of the kingdom ; and would not scruple

to declare that, in his judgment, the charge in question did not amount to high treason. This speech occasioned a very warm reply from Sir R. Walpole, and the point was decided against the Earl. As a speaker, Sir J. Jekyll is said to have been singularly ungraceful in his manner. By his will he left part of his estates to Lord Chancellor Hardwicke. Some portion of his property he bequeathed for the support of the Dissenting interest.

It has been well said, that an honest man is the noblest work of God. And, if the sentiment is capable of being carried out, it is surely not too much to assert that an honest lawyer must be something approaching to divine nature itself. For, unquestionably, we can only fairly judge of the real virtue of any man by taking into full account the degree of temptation to deviate from the path of duty to which he has been exposed; as there can be but little merit in a person who is possessed of wealth refraining from dipping his hands into his neighbours' pockets. His rectitude in not pursuing such a course must be considered as the result rather of policy than of principle. Every lawyer, however, as respects the temptations which beset him, may be regarded as a sort of modern Saint Anthony, so many, so great, and so incessant are the allurements of each kind with which he is surrounded. Doubtless, then, if honesty among men is any where commendable, it is so in a special manner here. And among none, it may be fearlessly asserted, are nobler instances of genuine honesty to be found than are here displayed, without ostentation, and often in spite of the two severest temptations to dishonesty that can arise,—pressing poverty in the person tempted, and a favourable opportunity for committing the crime.

But after all, perhaps, neither human nature, nor even that which is regarded as the worst portion of it, legal nature, are quite so atrocious as some writers (judging it may be from self-experience), would fain persuade us. There are doubtless different degrees of moral feeling in different men, and some persons form very different standards of rule by which to go, from what others do. But on the whole, there is probably much less of deliberate intentional vice than is supposed. That lawyers are not more unprincipled than statesmen, there would be no great difficulty in substantiating; though perhaps the former would think nothing gained by the proof. Indeed, the only fair conclusion in this case appears to be that, in general, each class deviates from the path of principle and virtue, in pretty exact proportion to the temptation that besets them.

It may not unreasonably be hoped that the lawyers are not only not worse, but that they are far better, in our day, than they were in Jekyll's time. The judges of this age are not even suspected, are deemed wholly incapable of actions which were openly practised by, and proved against those of the period in question. The bar is more learned, and more refined; and all the different orders have advanced in the same proportion. Indeed, the legal profession never stood higher, in the most important and essential points,—as regards the integrity and learning of its judges,—the ability and acquirements of its leaders,—and the correct and gentlemanly feeling which in general pervades its members,—than at the present day. A few exceptionable instances no more affect the character of the entire body, than the existence of a certain proportion of malefactors among its populace, is a real slur on the character of a nation; as the general conduct of it as a whole is neither influenced

by, nor partakes of the misdeeds of its unworthy members.

As any profession increases in the number of its followers, it must necessarily become less select. But, in the case of the bar, there is another danger which arises out of this, which is, that as the numbers increase, competition also increases, which especially tends to multiply temptations to irregular practices.

But the bar is not worse off, as regards the derelictions of its members, than every other profession in the kingdom. And it should be borne in mind that, while barristers are only accused of mere breaches of etiquette,—which, in their case, however, is regarded by their members as criminal,—many of those of the other professions have been convicted of direct violations of the law. Surely, therefore, the profession of the law, in which so many more and greater temptations to err occur than in most others, ought not to be unduly censured because some of its members have been proved to be men of incorrect principle. All bodies of men are, and must be, judged of by comparison with others, however imperfect and unsatisfactory this mode of forming an opinion of them may be. To try them by the standard of real perfection would be as impracticable as it would be unsatisfactory. It is, of course, no exculpation of any professional body that there are as many and as great delinquents in the rival professions; but the actual morality of each individual must be in some degree estimated by that which is general in the community.

As each living being, whether animal or plant, has some noxious attendant, to which the at once comprehensive and appropriate general designation of vermin has been attached, and which seeks to annoy by its unseen and offensive attacks; so each profession of an

exalted kind, and every character of the nobler order, has some puny assailant, whose crawling province it is to detract from the high reputation it cannot estimate, and to deteriorate the virtue it is unable to imitate. Most of the vituperation against the bar has proceeded from disappointed or disqualified aspirants to its membership, who, like the poets of whom a distinguished advocate of antiquity speaks, evince their eager coveting of its honours, by the rancorous zeal with which they are ever traducing them.

On Sir Joseph Jekyll's death, his office of Master of the Rolls was offered to Strange, who, like Lord Hardwicke, had been induced to abandon his original calling, and become a member of the bar; and who had been made Solicitor-General by his former colleague at Mr. Salkeld's, now become Lord Chancellor, and through whose instrumentality Sir John Strange had the option of promotion to the bench, which however he declined. Strange used sometimes to remark (as has already been stated)\* how little he expected, when the clerk of Mr. Salkeld, to be in a position to become the successor of the great man, whom he saw installed with all the dignity becoming his high office. The above circumstances, and a letter which at this time was written by Sir John Strange to his friend and patron, afford an additional refutation, if that were now needed, of the accusation brought by Lord Campbell, and other biographers of Lord Chancellor Hardwicke, against that great man, of having forgotten the friends of his youth, when he rose to eminence in the world.

The letter which follows is from Sir Robert Walpole to Lord Chancellor Hardwicke, informing him of the falling in of some preferment, in consequence of the death of

\* *Vide ante*, Chap. I.

Sir Charles Turner, to whom the premier appears to have been warmly attached.

“ *Houghton, Nov. 25th, 1738.\**

“ MY LORD,—The loss of the oldest friend & acquaintance I had in the world, is y<sup>e</sup> melancholly occasion of my giving y<sup>r</sup> Lordship this trouble. Poor Sir Charles Turner, the best of men & best of friends, died here at my house yesterday morning. He had lately been very ill, was thought quite recovered, & indeed appeared so ; was here two days, in all respects brisk & gay, went to bed at three o'clock, awak'd at twelve with a sickness & purging, but having the benefit of nature both ways, with<sup>t</sup> any help or remedy, went to sleep again, & slept till six, when he called up his man again, & in a great swett order'd a clean shirt, wo<sup>d</sup> get out of bed, & in putting on his clothes, died in his man's arms.—A sudden end to a most valuable life, but *seriùs aut citiùs*.

“ But it is in vain to lament his fate. The reverse of the medal shows me the benefit accruing to y<sup>r</sup> family, w<sup>ch</sup> I congratulate your Lordship upon . . .

“ This misfortune makes a vacancy in the corporation of Lynn, w<sup>ch</sup> may putt off my journey for one day longer than I intended, for I must see my principal friends there before I leave the country ; but I hope to be in town on Friday or Saturday at furthest. I am, with the greatest truth and affection, my dear Lord,

“ Y<sup>r</sup> Lords<sup>ps</sup> most obed<sup>t</sup> faith. humble serv<sup>t</sup>,

“ R. WALPOLE.”

A letter from the Duke of Newcastle to Lord Hardwicke, written during the month of August in this year, contains a passage which serves to show very forcibly the value placed by the Chancellor's colleagues in office on

\* Hardwicke MSS., Wimpole ; Coxe's Walp. ; Quart. Ed.

his services at the council board, where, according to Horace Walpole, Lord Hardwicke was only despised. The Duke, after expressing his great regard for the Chancellor, stating—

“ It is impossible to give greater marks of your particular affection, or of your undeserved regard, than you have done ”—

Concludes thus :—

“ I have agreed to meet you to-morrow at Lord Harrington's. S<sup>r</sup> Robert Walpole, and all of us, begg you would not fail to be there. . . . Pray, my dear Lord, don't fail to come. Horace begs you would be there by twelve o'clock.”\*

At the commencement of the year 1739, the Duke of Newcastle wrote to Lord Chancellor Hardwicke the following remarkable letter, strongly expressive of his regard and esteem for him, but complaining of his reserve and want of confidence, by which he appears to have been much hurt.

“ *Newcastle House, Jan. 9th, 1739.*†

“ MY DEAR LORD,—The great regard, & most sincere affection, that I have for y<sup>r</sup> Lordship, & the value that I put upon your friendship, will not suffer me to conceal from you the concern & uneasiness that your uncommon reservedness gave me yesterday, relating to Sir R. W<sup>s</sup> conversation with you, especially after I had showed a more than ordinary inclination to be acquainted with it.

“ It had, I own, such an effect upon me, that I found it influenced in some measure, my behaviour last night towards the person who, I thought, had been the occasion of it.

\* Hardwicke MSS., Wimpole.

† Ibid.

“I have, my Lord, seen so much of the world, & of ministerial confidences, that I have always observed, wherever they have been made to any particular person, exclusive of those who are known to live in the strictest & most mutual confidence with him, the secret is either not expected to be kept, or if it is, it has always been interpreted as distrust of, or want of regard to the persons so excluded. And an administration never so well united, (which I wish were our case at present) has always in it, some particular persons, whom friendship, habit & mutual good opinion have linked more closely together than the rest; & if ever that knot can be so far slackened, that it shall be a question with the rest, whether what is said to the one is not equally so to the other, great inconveniences have always arisen, & must arise to both.

“There was a time, when Sir R. W.\* honour’d me with his confidence, equal to any body; & however strong his injunctions may have been, I don’t remember ever to have concealed any thing from you. When you had leisure & inclination to be informed of it, & I believe, he wou<sup>d</sup> think it a vain attempt at present, to accompany any confidence to me, tho’ of never so high a nature, with such a condition.

“The subject of your discourse was such as, I may presume to say, my character will as well justify, & my station makes as proper, to have it imparted to me, as to any other person in the administration. My situation has long been very disagreeable to me, my only comfort, I can with truth say it, has been the friendship & unreserved confidence you have hitherto honour’d me with. If that is thought by any body, tho’ never so unjustly, to be capable of a diminution, there can be no

\* Sir Robert Walpole.

ease, I had almost said no safety, for me in this administration.

“I hope you will forgive the freedom of this letter, which proceeds from the sincerity of the heart of,

“My dear Lord,

“Your most affect<sup>d</sup> friend, and most humble servant,

“HOLLES NEWCASTLE.”

No copy of a reply to this letter exists among the papers of Lord Chancellor Hardwicke ; and, as he was in the habit of making rough drafts of all letters of importance, which he carefully preserved, and as he must have been in constant personal communication with the noble Duke, it is not improbable that the explanation was verbally made. The following was written by the Chancellor to the Duke of Newcastle on the 15th of March.

“MY DEAR LORD,\*—I was extremely sorry to observe in your Grace so much uncasiness as you discovered to day in the House of Lords ; & when I found it proceeded from something you had taken ill in my behaviour last night, it gave me an inexpressible concern. I will not attempt to enter into explanations in writing on so nice a subject ; but if your Grace knew my heart, you would want no conviction of my unfeigned & unalterable affection for you, & of the stedfastness of my intentions for your service, as well as to preserve that good harmony which hath been so long laboured for, on honourable terms. I had no other view ; & that view I shall continue to pursue to y<sup>e</sup> best of my power & ability, till I see (what I hope never to see) that it is desperate.

“But permit me, my dear Lord, to say that it is utterly impossible for me or any body else to do this, if

\* Hardwicke MSS., Wimpole.

one is not to be permitted to endeavour to soften things, and to avoid y<sup>e</sup> determination of points, on w<sup>ch</sup> our friends may be likely warmly to differ, at a time when they are not necessary to be determined ; especially when under y<sup>e</sup> present circumstances of affairs, it is probable they may never become necessary to be determined. This is my way of thinking, & if in this I have erred I am sorry for it ; but I am sure I can never end in being,

“ My dear Lord,

“ Your’s, &c.

“ HARDWICKE.”

To this letter the Duke of Newcastle wrote the following reply, in which his regard for Lord Hardwicke, and his deference to his judgment are strongly manifested.

“ Newcastle House,

“ Fryday Morning.\*

“ At my coming home last night, I rec<sup>d</sup> your lordship’s most tender & affectionate letter. I never entertained one moment any doubt of your goodness or friendship to me, of which I daily receive such valuable proofs ; but I must own I was extremely hurt to find myself so universally blamed the other night by all my best friends. . . . However, your kind letter has convinced me that I misjudged the time, & I heartily wish I could have had your previous opin<sup>n</sup>, & then I am persuaded I sho<sup>d</sup> have submitted to it, *habes confitentem reum*, & I have only the farther favour to beg that, notwithstanding what has passed the other night, you wo<sup>d</sup> continue the same kind & friendly advice ; & pursue in your own way the view you had so affectionately followed, of preserving that good harmony which is so much to be

\* Hardwicke MSS., Wimpole.

desired for public as well as private reasons. As to the measures to be taken with regard to the public, I am persuaded you & I do not differ; & as to the time or means of bringing them about, I shall hereafter entirely submit to your better & cooler judgment. I shall call upon you for one half hour this evening, before 8 o'clock, if you will give me leave; & am, if possible, more than ever,

“ My dear Lord,

“ Most sincerely and affect<sup>ly</sup> yo<sup>rs</sup>,

“ HOLLES NEWCASTLE.”

Mr. Pelham, we are told,\* occasionally experienced great difficulty in soothing the official jealousy of his brother, the Duke of Newcastle, and in suspending the consequent disputes between him and Sir Robert Walpole, which frequently rose so high as to threaten a breach in the administration. These altercations had been witnessed by Mr. Pelham with pain and anxiety. He therefore strongly recommended his brother to use a greater degree of caution in his correspondence with the minister, and also persuaded him to have recourse to the advice of Lord Hardwicke, and to submit to his dispassionate opinion. The Duke listened to these prudent suggestions, and occasionally employed the Chancellor to correct any intemperate expression which had escaped his pen. The conciliatory efforts of Mr. Pelham, aided by those of Lord Hardwicke, were also, we are informed,† successful in another instance, which shortly afterwards occurred, when Sir Robert Walpole offended the Duke of Newcastle, by resolving to confer the post of Privy Seal, on the intended resignation of Lord Godolphin, upon Lord Hervey, who had repeatedly insulted the Duke by his

\* Coxe's Memoirs of the Pelham Administration.

† Ibid.

sarcastic reflections. Finding his remonstrances against this obnoxious appointment of no avail, the Duke adopted the resolution of resigning. In a violent letter to Lord Hardwicke,\* which bears date the 14th of October, 1739, he details, in exaggerated terms, the evil consequences which he supposed would follow the appointment of Lord Hervey to the post of Privy Seal, and which would particularly affect his Lordship, the Duke of Grafton, Mr. Pelham, and himself; and contended that their weight and authority would be considerably diminished by the elevation of Lord Hervey, expatiating, with a great degree of irritation, on the ill effects which he himself in particular apprehended.

In consequence of this determination, the Duke endeavoured† to prevail on Mr. Pelham, and all his other friends, to concur with him in tendering their resignation. But as no remonstrances could induce the minister to desist from his intention of conferring the post of Privy Seal upon Lord Hervey, and as he had obtained the approbation of the King, both Mr. Pelham and Lord Hardwicke disapproved of so violent a measure, for so trifling a cause. Accordingly, by their temperate advice, they appeased the resentment of the Duke of Newcastle, and finally persuaded him to acquiesce in the appointment of Lord Hervey, which, after a suspense of several months, took place in April, 1740. On this occasion Mr. Pelham wrote to the Chancellor, gratefully acknowledging the success of his interposition in reconciling his brother and Sir R. Walpole.

With the Duke of Newcastle, Lord Hardwicke's friendship was uninterrupted for many years, and the longer it lasted, the more firm it became. Lord Hardwicke, after his first election to Parliament for Lewes,

\* Hardwicke MSS., Wunpole.

† Coxe's Pelham Administration.

sat for Seaford, which was a borough in the Duke of Newcastle's interest, during the whole of the time that he continued a member of the House of Commons.

The Duke of Newcastle may be regarded as a remarkable instance, probably the most striking one out of many which this country has furnished, of the immense advantage of rank and wealth to a political aspirant. Indeed, in this nation, politics seem to be the natural profession of the noble and influential.

That the Duke of Newcastle possessed considerable talents is unquestionable: they were of an order, however, that would have procured for him but comparatively little celebrity, had it not been for his high position, and the adventitious circumstances in which, by his birth, he had been placed. A dukedom, the command of a vast number of seats in the House of Commons, and the possession of a great landed estate, were the real causes of his eminence as a politician. That he was, to a certain extent, an able man is, however, shown in many ways. His parliamentary speeches, his acts as a minister, his private correspondence, each serve to give proof of this. As regards the last, this was doubtless unaided, and contained his own genuine thoughts and opinions, though in his conduct he may have been much assisted by his colleagues, and by none more than Lord Chancellor Hardwicke. Nevertheless, by these he was assisted only; not prompted, but merely aided in the course he was pursuing.

The opinion of the Duke of Newcastle formed by his Sovereign, who was a man of considerable shrewdness, and a great discerner of talent besides, and who really understood foreign affairs, about the management of which the Duke was mainly concerned, must be allowed to weigh much in this minister's favour. His Majesty

declared that he regarded the Duke of Newcastle and Lord Hardwicke as the only efficient members of the government. The long period during which the Duke presided over the affairs of this country, in times of great difficulty and perplexity, even allowing him to have been assisted as he was, affords no mean proof of his talents as a ruler.

If making large pecuniary sacrifices for his country's good may be allowed to constitute a great patriot, the Duke of Newcastle is eminently entitled to be ranked as such. He impoverished himself entirely through his zeal for the interests of his Sovereign and his party, when he might have enriched himself at the expense of the nation. And, notwithstanding his poverty so incurred, he resolutely refused, on retiring from office, to receive any pension for his services; in which respect he may be honourably contrasted with others who came after him, who acted in a very different manner, though professing much more and performing much less than he did.

The Duke of Newcastle's faults were, perhaps, rather those of the age, than of the man; and for the most part were more frailties than faults. It is unjust to accuse a person, as has been also done in Lord Hardwicke's case, of being a statesman of such an era; implying therefrom, that he necessarily partook of the evil character of the times. Though bad company is to be shunned, it by no means follows that we must be tainted by it, when coming into contact with it is unavoidable. As is shown in the Duke of Newcastle's conduct towards Lord Hardwicke, the inconstancy, and perfidy, and duplicity of which the former has been accused, were never exhibited when dealing with a man on whose honour and principle he had full reliance.

It was probably in many respects highly advantageous to the mind and character of Lord Chancellor Hardwicke, that he was united so closely by official ties with such a politician as the Duke of Newcastle, whom on all occasions of emergency he was called upon to advise. By this means his own energies were called forth to the utmost, and his attention was directed to the different grand state measures which were in progress. The responsibility, in his case, of advising the minister, was almost as great as if he had been the acting minister himself. In this way a man may be as extensively influenced by another of mind inferior to his own, as he would be by close connection with an individual of superior endowments and genius.

Parliament met early in the year 1739. The draughts of the address of the Lords in answer to the speech from the throne, and of the King's reply to this, are both in the handwriting of Lord Chancellor Hardwicke.

The speech of Lord Hardwicke in the House of Lords on the 9th of February, 1739, respecting the proceedings against Paul Whitehead, will be read with peculiar interest; and the constitutional doctrines which he propounded with regard to the grand question of "The Liberty of the Press," are quite as applicable to, and as valuable as authorities, at the present day, as they were on that on which they were delivered. He well lays down the principles as to what that freedom consists in; points out the errors entertained respecting it, and the abuses to which it is liable. Some curious and exact antiquarian knowledge is displayed in one part of his argument; and the mode in which he traces back to its source the original history of the press, will be interesting to many.

"Whitehead published a poem of some ability, entitled 'Manners,'

which was a satire, not only upon the administration, but upon all the venerable forms of the constitution, under the assumption of an universal depravity of manners.

“ In the House of Peers, Lord Delawar, after expatiating on the gross falsehoods and injurious imputations contained in the poem, against many noblemen and prelates of high character, moved that the author and publisher should attend at the bar of the house. On the day appointed, Dodesley appeared as the publisher, Whitehead having absconded. He was taken into the custody of the Usher of the Black Rod, but released after a short confinement, and payment of the usual fees.” \*

During the discussion on this occasion, the Lord Chancellor delivered his sentiments on this subject as follows :—

“ My lords, the liberty of the press is what I think ought to be sacred to every Englishman ; and, I dare answer for it, will be ever so to your lordships. But, my lords, though the liberty of the press is in everybody’s mouth, yet I am afraid there is nothing less understood than the nature of that liberty. My lords, I have often desired an opportunity of delivering to your lordships my sentiments with regard to the liberty of the press ; and as that expression has been mentioned in this debate, I think I cannot have a fairer opportunity of doing so than the present.

“ The liberty of the press, my lords, is by most people, I know, taken for a liberty to publish every indecency of any kind against the most respectable persons and the highest characters ; and so strongly does this notion prevail, that a libeller is no sooner prosecuted, than a cry is immediately set up that the liberty of the press is endangered. But, my lords, give me leave to say, that if the liberty of the press consists in defamation, it were much better we were without such liberty. My notion, my lords, is that the words ‘ the liberty of the press,’ are improperly used to express a right, which is peculiar to the press, of publishing to the world any defamatory matter to the prejudice of superior, inferior, or equal. My lords, the laws and constitution of England know of no such liberty ; for that would be a liberty destructive of all laws, and all constitutions.

“ My lords before the discovery of printing, very strong statutes were made against defamation, which very statutes are still in force ;

\* Chalmers’ British Poets.

and no man, my lords, will show me any one statute upon this head, that was in force before the discovery of printing, which has been since repealed. From this, my lords, I think it is evident that by the expression, 'The liberty of the press,' can never be understood any liberty which the press acquired, and which was unknown before the discovery of printing. This I hope your lordships will find a fair and just way of reasoning, and, indeed, the only way in which we can reason on this subject.

"I am very sensible, my lords, of how much use the press was at the time of the Revolution; but the authors who wrote at that time on the side of liberty advanced nothing that was not agreeable to the constitution; they were warranted by law for what they wrote, and they had the sense of the nation on their side. Besides, my lords, there is a great difference betwixt an author's writing on a speculative subject, on which he thinks he has something to communicate that may be of service to the world, and an author's falling foul on all mankind, because they are not of his way of thinking. The authors on the side of the Revolution, my lords, communicated their sentiments, with the greatest deference to the persons and characters of their superiors, unmingled with personal calumnies or virulent reflections. Therefore, my lords, it is a groundless cry against the government, when a libeller is punished, to compare the conduct of this government to that before the Revolution; unless those gentlemen can prove, to the satisfaction of a jury, that they write with as much caution, and with as much decency, as the writers who, in the reign of King Charles II. and King James II., wrote on the principles of liberty.

"Having said thus much, my lords, I cannot help taking notice of another very common mistake with regard to the freedom which some gentlemen think themselves entitled to in censuring the conduct of their superiors. This is a freedom unknown to our constitution, and subversive of our known statutes, because a great part of our laws are intended for the relief of any person who is injured by another."\*

On the 8th of February and the 1st of March there were debates in the House of Lords, on the subject of the convention with Spain. Lord Hardwicke spoke on both these occasions; but as there was no point of constitutional law involved in either of his speeches, which are chiefly remarkable for the courtly demeanour and

\* Hansard's Parl. Hist.

conciliatory tone in which they are couched, and are applicable only to the particular events alluded to, it is unnecessary to report them here.

On the 11th of May, 1739, an important debate took place in the House of Lords, about enabling the King to make good the treaty with Denmark, and to increase the forces. On this important occasion Lord Hardwicke fully and explicitly laid down the constitutional doctrine as to the authority of the Crown to augment the forces of the country, when necessary ; the principles of the Revolution as regarded this power ; and the limit to be affixed to the maintenance of troops without the consent of Parliament.

Lord Chancellor Hardwicke, after some preliminary remarks, thus proceeded :—\*

“ Our constitution can be no way enlarged by the Parliament’s giving the Crown their authority, to do what it may do without any such authority. By the very nature of our constitution, the Crown has, during the recess of Parliament, a sort of dictatorial power to take care, *‘ne quid detrimenti respublica capiat ;’* and, in consequence of this power, His Majesty may augment his forces, both by sea and land, if it should become absolutely necessary ; and he may concert such measures as any sudden exigency may require, without a previous authority from Parliament for that purpose. When it can be foreseen that such a necessity may probably happen, or that such an exigency may probably arise, the authority of Parliament ought to be previously asked ; and, when that probability appears in any high degree, either from the circumstances of affairs at the time, or from what His Majesty then communicates, the Parliament ought to grant the authority demanded.

“ Such a message from the Crown, or the Parliament’s complying with that message, is so far from being inconsistent with, that it is highly agreeable to our constitution ; because, the sending of such a message is a token of that regard which the Crown ought always to have for the authority of Parliament ; and a compliance with it, is a testimony

\* Hazard’s Parliamentary History.

of that concern which the Parliament ought always to have for the public safety.

“As this credit and confidence, my Lords, can last no longer than till next session of Parliament, and as every session of Parliament must necessarily begin within seven or eight months after the expiration of the preceding, it is impossible to suppose that any such vote of credit and confidence can ever be of dangerous consequence to our constitution; because, in so short a time, it will always be impossible to raise and discipline such a number of forces, or to levy such sums of money, as would be necessary for overturning the liberties of this nation; especially if we consider, that, by virtue of such a vote of credit and confidence, His Majesty can impose no taxes, nor force any loans, nor can any man thereby be compelled to list in His Majesty's land service. If the administration should attempt to levy forces, or borrow money, without any apparent necessity, the people would immediately become jealous of their having designs against the liberties of their country; and, in that case, no man would lend money to the government, or list in the government service; even the officers of the army themselves, would be apt to declare against such new levies; and, if they did not refuse to obey, they would certainly be very negligent in fulfilling the orders issued for that purpose; which would of course render the designs of the administration abortive, and next session of Parliament would certainly punish them for the attempt. Thus it must appear, my Lords, that our constitution can be brought into no danger, by our complying with what is proposed; and as to our having a power to comply with every thing demanded in this message, I wonder to hear it made the least doubt of.”\*

On the 4th of June the breach of the convention of Spain formed the subject of debate in the House of Lords. On this occasion Lord Carteret moved a resolution, that the failure of Spain in payment of the money stipulated by the convention, was a breach of the convention in that particular, a high indignity to His Majesty, and an injustice to the nation.

The energetic, though at the same time cautious and statesmanlike tone, and comprehensive view of the matter, adopted by Lord Hardwicke, are what are mainly

\* Hansard's Parl. Hist.

observable in this speech ; but no constitutional principles are propounded in it, to render a quotation here desirable.

Coxe's Memoirs of Sir Robert Walpole contains the following anecdote connected with this debate, relative to Lord Chancellor Hardwicke.

“ The Chancellor, Lord Hardwicke, a man of moderation, good sense, and candour, spoke with such vehemence in the House of Lords against the depredations of the Spaniards, and in favour of compulsory measures, that Sir Robert Walpole, who stood behind the throne, exclaimed to those who were near him, ‘ Bravo, Colonel Yorke, bravo ! ’ ”

The session of Parliament closed soon after this ; but it was not until the 23rd of October, when several negotiations and attempts at an amicable adjustment of their differences had been made, that war was actually declared by Great Britain against Spain.

The next letter which we have from the Duchess of Marlborough to Lady Hardwicke in part confirms the statement which has been elsewhere made, that even the suitors in his Lordship's court, whose causes were decided unfavourably to them, went away satisfied ; so charmed were they with the eloquence and reasoning with which the Chancellor expressed the grounds on which he had made his decrees.

“ *August the 5th, 1739, Monday.\**

“ MADAM,—I cannot satisfy myself without begging your Ladyship w<sup>d</sup> take an opportunity to give my L<sup>d</sup> Chancellor my most sincere thanks for the justice he did in Robert's cause, & for his goodness in enquiring after my health. The cause being now over, I think there can be no reason that I shou<sup>d</sup> not endeavour to express myself as well as I can on this occasion. And, tho' I

\* Hardwicke MSS., Wimpole.

think it might appear hard to some, that the executors had not costs given 'em, who have paid great sums at crown prices, (tho' the debt raised in 1715, which will be demonstrated in other causes,) & costs too, yet I really like what my Lord Chancellor did, & was convinced by his reasons. For tho' a very mean man purchased estates by the abuses at Blenheim, I do think it wo<sup>d</sup> have been more trouble for me to have got the costs of Robart, than anything of that kind is worth. I long of all things to be at liberty to wait upon you, as I used to do. And I hope it wont be a great while before I shall have that pleasure. For the next cause that will come on, is that of Travers, which is a thousand times worse than Robart's, & infinitely more ridiculous. And therefore, I think it will give my Lord Chancellor very little trouble, which I am glad of ; because I do pity extremely what he suffers, in hearing so much repetition, which I take the liberty to call nonsense, on the side of those that are in the wrong. I heartily wish the fatigue he endures every day may not prejudice his health, for I believe you don't wish his life may continue long with more truth than I do ; who am, with great inclination & esteem,

“ Madam,

“ Your Ladiship's

“ Most obedient and most humble servant,

“ S. MARLBOROUGH.”

In a manuscript fragment of a biographical memoir of Lord Chancellor Camden, which Lord Campbell has quoted, and which is appended to the latter's very interesting and able life of that distinguished lawyer, in his *Lives of the Chancellors*, is the following account by Lord Camden of Lord Hardwicke's method of delivering his judgments.

“ He has often told me that, in the Court of Chancery, multitudes would flock to hear Lord Hardwicke, as to hear Garrick ; that his clearness of arrangement, and comprehension of the subject were masterly, but that his *address* (and he laid emphasis upon the word), in the turn which he gave to all, whether he was in the right, or was to ‘make the worse appear the better reason,’ was like magic.”

On the rumour of Lord Chancellor Wyndham’s intention to resign the Great Seal of Ireland, Lord Hardwicke’s early friend, Mr. Robert Jocelyn, wrote to him to request his Lordship’s interest in his behalf, who had on several previous occasions been instrumental in promoting his advancement. Lord Hardwicke gave the best and most satisfactory proof that he had not *forgotten* his early companion and friend Mr. Jocelyn, by at once applying for the Chancellorship of Ireland for him. It appears, however, that the Irish Primate, and Speaker had been beforehand in their solicitations on behalf of Chief Justice Reynolds, and the Solicitor-General of Ireland ; and there seemed to be a strong disinclination on the part of the government to disoblige persons of so much influence in that kingdom, or to do anything to create any jealousies there. Lord Chancellor Hardwicke, however, exerted himself strenuously for his friend ; and on the 28th of August he received a letter from the Duke of Devonshire, then Lord Lieutenant of Ireland, informing him that His Majesty had determined to appoint Mr. Jocelyn Chancellor of Ireland. On this, Lord Hardwicke wrote to him, informing him of the success of his efforts, from whom he received the following reply :—

“*Dublin, 5 Sept. 1739.\**

“ MY LORD,—I received yesterday the honour of your Lords<sup>ps</sup> letter of the 28<sup>th</sup> ulto., & the same packet boat

\* Hardwicke MSS., Wimpole.

brought over His Majesty's commands to appoint me Chancellor.

"I want words to express the real sentiments of gratitude, which I now do, & ever shall feel, for the unusual friendship & zeal with which you have been pleased to espouse my promotion.

"At first, I thought it impossible for y<sup>r</sup> Lords<sup>ps</sup> to have added to so great an obligation, & yet you have much increased the debt. Your kind advice has something so good in it, & is so usefull to me, that at the same time I thank y<sup>r</sup> Lords<sup>ps</sup> for it in the most sincere manner, I engage my credit with your Lords<sup>ps</sup> to follow it most religiously.

"Notwithstanding the many favours I have already received, pardon y<sup>e</sup> immodesty, I must begg one more. As I enjoy the benefit of your patronage, let me have the happiness of your protection. On my part, it shall be the study of my life not to dishonour y<sup>r</sup> recommendation. I have wrote to the Duke of Devonshire, to let him know that I have had an account from y<sup>r</sup> Lords<sup>ps</sup> of the obligations I lie under to his Grace. I am, with the greatest truth & respect,

"My Lord,

"Y<sup>r</sup> Lords<sup>ps</sup>'s most obed<sup>t</sup>

"& most devoted humble serv<sup>t</sup>,

"ROBERT JOCELYN."

"P.S. Mrs. Jocelyn joins with me in desiring y<sup>r</sup> Lords<sup>ps</sup> will make our best acknowledgments acceptable to my Lady Hardwicke."

During the month of August, 1739, the Lord Chancellor, accompanied by his sons, Philip, Charles, and Joseph, took a trip to Portsmouth. They set out from Lord Hardwicke's seat at Carshalton, early on the morn-

ing of the 21st; and, after stopping the night at Liphook, reached Portsmouth about the middle of the next day. They dined at the inn at Portsmouth soon after their arrival, in company with Admiral Cavendish, Mr. Hughes, the Commissioner of the Dockyard, Captain Griffin, the Captain of the Admiral's ship, Captain Smith, a Dover man, and Dr. Bradly, in whose promotion the Chancellor had been instrumental, and at whose house he and his sons slept. Before dinner, the Mayor and Corporation presented Lord Chancellor Hardwicke with the freedom of the town. The party drank tea at the Admiral's, and then went over the Dockyard; and after that they went on board a ship of ninety guns, which was being built, and was called the *St. George*. They also visited the Academy and the Orrery, and closed the diversions of the day by supping at the Admiral's, where a very elegant entertainment was provided for them.

The next morning, after breakfast, Lord Hardwicke and his sons went on board the Commissioner's yacht, and were received with a salute of six guns. They proceeded in the yacht to Spithead, where the Admiral's ship and two other men-of-war lay. A fresh breeze sprung up, and they all enjoyed themselves very much, though "Master Joe," the Chancellor's third son, was a little sick; but the Admiral having kindly administered to him a dose of rum when they got on board his vessel, all was soon right. The Chancellor was received by the Admiral with due honours, drums beating and trumpets sounding, the men all in their stations on the ropes, and flags flying. The party went all over the ship, and inspected the ammunition, provisions, &c., and were much gratified with what they saw. They were then entertained in the Admiral's cabin with cake, sea biscuit,

and wine. After spending some time there, they went into the Admiral's barge, which was rowed by twelve men in shirts and caps of the Admiral's livery. When they had got a little way from the ship, the sailors again took their stations on the ropes, and gave their visitors three huzzas, accompanied by a salute of seventeen guns, the former of which were duly answered from the barge.

They reached the shore in about twenty minutes, and dined with a party at the Admiral's, where they were very handsomely entertained. The gun wharf and fortifications were inspected by the Chancellor and his friends in the evening, and the day concluded with a supper at the Commissioner's. The next morning Lord Chancellor Hardwicke and his sons set out for Carshalton, where the narrator of this excursion says they arrived on the following afternoon, being Saturday, "to dinner, in high spirits and good health."\*

Mr. Joseph Yorke, in a letter to his sister, written about ten years after this, alluded, in the following amusing strain, to their life at Carshalton at this period, and the strict order in which the Chancellor's children were kept :—

"Your letter from Carshalton diverted me most, as it recalled to my mind all the scenes of my childhood in a comical light ; & I enjoyed excessively the ideas which struck you upon inhabiting the same place, as mistress of it, where formerly one was constrained by the looks of papa and mamma. I dare say you were much surprised to find you could go out when you pleased, & I question whether you had half the inclination to go out as you had then. . . . I am sorry the birds are my enemies, but they did not tell you half the harm

\* Hardwicke MSS., Wimpole.

I did 'em, as they concealed from you the number of eggs & nests I destroyed. I long to be with you there, I assure you; but I beg when I do go that you would not lay me in the best bed-chamber, but somewhere in the gallery.”\*

Parliament met again in November, and on the 15th of this month there was a grand debate in the House of Lords, on the address of thanks in reply to the speech from the throne. Some animadversions fell from the opposition members, on the mode in which the war had been conducted, and on the allusion made in the speech from the throne, to the divisions and animosities existing in the country, which the opponents of the ministry denied. The convention with Spain, they contended, was condemned by the declaration of war.

Lord Chancellor Hardwicke addressed the House at some length; but, as a large portion of his speech is applicable solely to the occasion on which it was delivered, and possesses no interest independent of that, I have extracted those parts of it only in which he treats with great power on constitutional points of leading interest, and reasons with much penetration, and in a most philosophical manner, on the internal divisions to which nations are liable;—a subject which it is hardly to be hoped will ever become so obsolete as to render his opinions on this point unimportant.

He thus commences his address:—†

“*The Lord Chancellor.* My lords, as nothing is more necessary at the beginning of a war than concord and unanimity among ourselves; and as our unanimity at present seems to be interrupted by a misapprehension of what His Majesty has said in his speech from the throne, and likewise of what the noble lord has been pleased to propose by way of answer, I hope your lordships will excuse my rising up, to endeavour to restore that unanimity which I wished to see established, by explain-

\* Hardwicke MSS., Wimpole.

† Hansard's Parl. Hist.

ing and removing that mistake which I think has occasioned the present interruption."

He then referred to the divisions and animosities existing in the country, which, he said, had been acknowledged by all, and even noticed by our enemies, as in the Spanish manifesto; and which had, in reality, been the chief obstacle in our negotiations with Spain. If the late divisions had been between the people on the one side, and His Majesty's servants on the other, such a division, if any such could be, would be unhappy for the nation. And "as His Majesty is the political father of us all, as he is the father of his servants as well as of his subjects," it was necessary for him, especially at the commencement of a foreign war, to endeavour to reconcile them, by recommending peace and unity to both.

"But, my Lords, I am far from being of opinion, that any such division can ever exist, in which the whole people are of one side, and the King's ministers, or a few of them only, of the other. I believe the most hated or despised administration that ever was in this kingdom, had a great many friends among the people, and a great party that approved of their measures; and, therefore, I cannot approve of the custom mentioned by a noble Lord in this debate, of making use of the words, people and administration, as two opposite terms. I think it an invidious sort of distinction, and therefore, I must think, that the custom is at all times somewhat seditious.

"Gentlemen may differ in their opinions, and those who have the honour to serve His Majesty, may think that for the good of their country, which others think not to be so; but those who differ from them ought to judge of their conduct with that candour and charity, which the noble Lord who spoke last has recommended; and which I am convinced, is a way of judging practised by him upon all occasions. If every man, both within doors and without, would follow his Lordship's example, we should have no heats or animosities in the kingdom, nor would any one suppose such a division, as that of the whole body of the people upon one side, and a few of His Majesty's ministers upon the other.

"Such a division, my Lords, can never, as I have said, exist in any

country, and much less in this than any other, unless our constitution should be first overturned, or at least suspended; and I am sure we have lately had nothing like it."

On the 28th of February, 1746, the Earl of Halifax took notice in the House of Lords of a message sent from the King to the House of Commons, for a supply, which had not been communicated to the Peers. He asked whether that House had so long flattered the minister, that he could be secure of them without common civility to them? The House of Lords, he said, was as much out of thought as the convocation. Even if the essence of Parliament were lost, the form and appearance of it would still be kept up. This was no matter of dispute between the Lords and the Commons. All the Lords wanted was to be consulted as a House of Parliament. If the House of Lords was brought low, the Commons would not be secure. He moved a resolution, that it was contrary to the usage of Parliament, and derogatory to the privileges of that House, that a message for supply should be sent to the Commons singly.

Lord Hardwicke stated clearly and explicitly, and with the authority he was entitled to do, the constitutional doctrine applicable to the very important matter in dispute.

"*Lord Hardwicke.*\* I consider it as my particular duty, to be concerned for the preservation of every privilege of this House. If there were any wrong clause in a money bill, we should reject the whole, and let the Commons bring in another. There are messages, 1. For advice; 2. Relating to the authority or privileges of either House; 3. About matters not appropriated to one House, but at present under its consideration. The first sort should be sent to both Houses. The second to the House concerned. So in the case of the Peerage Bill, a mes-

\* Hensard's Parl. Hist. From Secker's notes.

sage was sent to this House only, though it came by way of bill. And so it should be in any case of judicature. The message under consideration is of the 3rd kind."

It was carried, says Bishop Secker, that the motion should not be put.

On the 15th of April a motion was made in the House of Lords by Lord Bathurst, for a vote of censure against ministers for not sending land forces with Admiral Vernon to America.

Lord Bathurst contended that we had a great army, and observed that Providence had preserved to us persons fit to undertake any thing in council or in war. But the war had been undertaken by persons used only to controversies decided by volleys of ayes and noes. If sufficient land forces, commanded by experienced officers, had been sent to America, Panama or Carthagena might have fallen into our hands. Apprehension of the danger of an invasion, he asserted to be a perfect chimera.

The following report of Lord Hardwicke's speech on this occasion, and of the replies it called forth, is from Bishop Secker's notes of the debate.\*

*" Lord Chancellor Hardwicke.* Who the pilots were, and what the ship suffered in the calm, I know not ; but they who endeavoured to avoid the storm are the best to govern the ship in it.

"By the nature of our constitution, we must be slower than others in some things. Our possessions in the Mediterranean, and our trade have been protected, and the Spanish ships blocked up. Would it have been proper to invade Old Spain ? What else hath been omitted ? Certain and infallible ! What ways of talking are we come to ! Do we leave Providence entirely out of the question !"

*" Argyle.* The noble Lord's representation of the motion is toying with words. Nobody will suppose Providence meant to be excluded."

\* Hansard's Parl. Hist. From Secker's notes.

“*Bathurst.* I mentioned not ‘pilots,’ but ‘that pilot,’ and that pilot hath run us into the storm.”

The motion was negatived by 62 to 40.

The following letter from the Lord Chancellor to the Earl of Oxford, who was celebrated for his famous collection of manuscripts and books, is interesting, as affording proof that, amidst all the avocations which Lord Hardwicke’s high judicial, and important political office entailed upon him, he still continued to pursue those liberal studies, by the cultivation of which his mind had been so enlarged and invigorated.

“*Powis House,\**

“*Aug. 3rd, 1739.*

“MY LORD,—I have the honour to return your Lordship, with my most humble thanks, the manuscript and two printed volumes, which you had the goodness to lend me some time ago. I am ashamed not to have done it sooner, but your kind permission to take a copy of one of the treatises occasioned the delay. The great treasure of this kind which your Lordship possesses, becomes much the more valuable by that great candour and benevolence with which it is communicated to others, and which renders it truly useful to the world.

“I am always, with the most perfect respect,

“My Lord,

“Your Lordship’s most obedient,

“And most humble servant,

“HARDWICKE.”

The commencement of the year 1740 was rendered remarkable by a frost of very great severity, which prevailed all over Europe. The Thames was entirely frozen over, and quantities of fish destroyed, as were

\* Dr Birch’s MSS. Collect.; Brit. Mus.

also vegetables of different kinds. This was followed by a general scarcity and famine, which in the end produced an appalling malady of another description.

The extraordinary and terrific ravages of the gaol fever, at the period of our history embraced in this narrative, have already been remarked upon; and to the legal profession more especially of each grade they must have been a subject of constant apprehension. The metropolitan gaols, and those in the west of England, seem to have been the most infected; and it was on the western circuit some years before this, that the Lord Chief Baron, and High Sheriff of the county, with several leading counsel and others connected with the business of the assizes, were carried off by it. A correspondence took place during the spring of the year 1740, between the Lord Chancellor and Mr. Justice Abney, who was some years after a victim to this very disorder. A letter was sent by the judge to Lord Hardwicke, inclosing one from a physician at Exeter, informing him of the breaking out of the gaol fever to an alarming extent in that city, which, however, appears to have originated in quite a different quarter, and was supposed to have commenced among some of the poorer classes, with an infectious disease of a different kind, caused by the scarcity of provisions and bad living, occasioned by the late dearth. The judges had already proceeded on the circuit, and were then at Winchester.

Lord Chancellor Hardwicke replied to Mr. Justice Abney in the following terms:—

“ *London, March 12, 1740.\**

“ SIR,—I received your letter, with Dr. Lee Dickens’s inclosed, & think you did extremely right in transmitting

\* Hardwicke MSS., Wimpole.

the account you received from Exeter of the distemper among the prisoners in the gaol there. I have consulted the two Lords Chief Justices on this occasion ; and, as it appears to us that the city in general enjoys its usual state of health, we are of opinion that Mr. Baron Reynolds and you sh<sup>d</sup> proceed to Exeter, & try the civil causes there. For, as all the process is returnable at that place, it is necessary that at least the commission sho<sup>d</sup> be opened there ; &, as there wo<sup>d</sup> be but very little notice, in case the Assizes sh<sup>d</sup> be adjourned to any other place, it would be extremely inconvenient so to do, for want of proper accommodations for the judges & council, & their attendants, & y<sup>e</sup> gentlem. of y<sup>e</sup> county.

“ We are also of opinion that, when you come to Exeter, it may be proper for you to desire the most eminent physicians of the place to attend you, & take their opinions as to the contagious nature of the distemper, & y<sup>e</sup> danger y<sup>t</sup> may arise fro’ trying such prisoners as are in the gaol, in w<sup>ch</sup> it may tend to give satisfaction if you should communicate with some of the principal gentlemen of the county attending the assizes.

“ If it should be judged hazardous to try the infected prisoners, then such persons only may be tried as are out upon bail (leaving the others till the next assizes), & also the traverses & such other business as may be despatched without the prisoners appearing at the bar. The grand jury may also find the bills. And it may not be amiss for the judge in his charge to touch upon this subject, but in such a manner as not to give too great an alarm to the county.

“ We think it advisable in this case that you should desire the opinions of the physicians in writing, for your

greater justification ; & that you should recommend it to the justices of the peace to bail all such prisoners as are in custody for bailable offences, in the interval between the two assizes. If any of the prisoners committed for capital offences should enter their prayer to be brought to tryal at this assizes, pursuant to the Habeas Corpus Act (which is not very likely), you will in such case consider how far the present circumstances may be a sufficient ground for putting off their trials.

“ As Mr. Baron Reynolds & you will go through or near Exeter in your way to Launceston, you will have an opportunity to inform yourselves whether the distemper has increased or abated, & will from thence receive further light how to act in this disagreeable situation. I doubt not but you will both contribute y<sup>r</sup> endeavours to conduct this affair with the utmost prudence & regard to His Majesty's service, & heartily wish you a happy circuit, & y<sup>e</sup> preservation of y<sup>r</sup> health. I am, &c.

“ HARDWICKE.”

These judicious and cautious regulations of the Chancellor being carried out, no doubt largely contributed to the safety of those concerned in the administration of justice, and to the satisfactory dispensation of the latter. And as we hear no further of the direful effects of this disorder at the period alluded to, it may be presumed that by the course suggested, the danger apprehended was on this occasion averted. In the present day, the legal profession, and the public generally, are no less fortunate in the extermination of the horrible and fatal malady, which, at the period described, haunted the miserable receptacles provided for the devotees of crime, and

thence stalked through the land, and spread desolation on all ranks and classes alike, than in the improvement, no less great or remarkable, which has since taken place in the social and moral condition of the country, and the decrease of those outrages of extraordinary violence and disorder, with which, in Lord Chancellor Hardwicke's time, the nation was throughout laid waste. For the prevention of the one we are indebted to the benevolent and unwearied efforts of some of our true philanthropists; and for the suppression of the other, to the exertions, no less humane, less enlightened, or less arduous, of certain of the great luminaries of Lord Hardwicke's own profession, who devoted their minds and their energies to the reform of our criminal code: to these illustrious men England owes a measure of gratitude which no pecuniary compensation could ever repay. A nobler reward, however, was reaped by them in the consciousness they possessed of the good deeds they were performing; the memory of which, and the experience that we have of the success of their humane projects, form the most suitable monument of their achievements they could desire to have erected.

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We now come to the consideration of that very important and interesting branch of the subject embraced in this memoir, the equity cases argued before, and the judgments which were delivered by Lord Hardwicke, as Lord High Chancellor of Great Britain; and to which latter, as I have before observed, he mainly owes the high celebrity which is universally awarded to him.

The rule by which I have been here directed in the selection of cases, is the desire to choose such as are of general interest, independent of their practical importance in a professional point. I have been also anxious to bring forward those by which some grand, leading, fundamental principle has been established or enunciated in the decision of them. Mere cases of practice, or the determination of which was based on a reference to some established precedent, however valuable to law students, and to those desirous of becoming suitors in an equity court, could not be considered adapted for insertion here.

It is, however, very difficult to give a correct and adequate idea of the character and value of Lord Hardwicke as a judge, by citing examples of his decisions in a work of this kind, as some of the most important of them may be the least fitted for quotation here, or least likely to be intelligible to the general reader ;—such, for instance, as cases on intricate and subtle points of real property law, the law of bankruptcy, fraud, contract, or those numerous ones relating to the construction of wills.

But though the cases cited may not be quite sufficient to afford an entire view of Lord Hardwicke's character and capacities as a judge, yet I believe they will serve the important purpose of showing his mode of treating a legal topic generally, of arguing upon it, of referring to first principles, and of grounding his decisions on reason and justice, as well as on the strict rules of law and equity.

In some cases of interest, contained in the authorized reports, the main points in the decision are there so involved with the arguments of the counsel, that it is impossible to give the one without the other. In other cases, as in *Chesterfield v. Jansen*, and in the

very interesting one of *Omychund v. Barker*, Lord Hardwicke's judgment is a joint one with the common-law judges, to whose sentiments and opinions it occasionally refers. Sometimes the general substance only, both of the arguments and of the decision, is given together, the report in such case comprising a more general historical account of the trial and its results.

The notes of the arguments in the different cases heard before Lord Chancellor Hardwicke, as taken down by him at the time, are contained in twenty-six thick octavo note-books. As in the notes of the common-law causes, the principal points only in the arguments are recorded; and a skeleton of his judgment is frequently given at the end of the case, which serves well to illustrate his manner of dealing with topics brought before him, and especially his mode of analyzing the subject, and arranging and considering separately the various matters presented to his mind. In some few instances he has embodied in a note the substance of the judgment he delivered.

I may here mention that, in making the selections contained in these pages from Lord Hardwicke's Chancery note-books, as also of the trials in which he was engaged while at the bar, I have been guided rather by a desire to elucidate his mode of operation, than by the hope of being able to afford to the reader any complete and adequate notion of the nature of the doctrines he propounded or the general legal system he established. My main object is to exhibit the process of the manufacture, and to display the working of it in its various stages, by which the method of effecting this may be best explained. But I am not here seeking to form a selection of decisions for the general guide of the practitioner, further than his own method of dealing with

professional topics may be advantageously directed by the able and scientific mode he perceives to have been adopted by this great judge.

The following is a note of one of the first cases argued before Lord Chancellor Hardwicke after he obtained the Great Seal:—

“ *Smith con. Read.*

“ Bill by a Protestant claiming title. . Insisting & praying a discovery w<sup>r</sup> y<sup>e</sup> p<sup>son</sup> (Anne Payne) under whom y<sup>e</sup> d<sup>t</sup> claims by devise, was a Papist.

“ Def<sup>t</sup> pleads to y<sup>e</sup> discov<sup>y</sup> w<sup>r</sup> she was a Papist, y<sup>t</sup> it tends to create a forfeiture of y<sup>e</sup> estate.

“ *Mr. Verney, pro def.* Y<sup>t</sup> a p<sup>son</sup> shall never be obliged to discover a matter w<sup>ch</sup> may subject him to any forfeiture. Y<sup>t</sup> this disability is a forfeiture.

“ The legislature tho<sup>t</sup> p<sup>sons</sup> not obliged to discover such a fact, & therefore, in y<sup>e</sup> acts relating to presentations to livings, inserted a clause to p<sup>hibit</sup> all p<sup>sons</sup> to plead these penalties & forfeitures.

“ In cases of copyholds, ten<sup>t</sup> not obliged to discover wast or other facts, whereby he may have forfeited y<sup>e</sup> estate.

“ *Mr. Browne, ad idem.* Bankrupt—p<sup>son</sup> buys goods after b<sup>k</sup>cy—may pl<sup>d</sup> & deny notice.

“ *Monius & Monius*, 2 Cha. R. 8<sup>o</sup>, fo. 68.

“ Estate limited to a widow during widowhood—y<sup>e</sup> Court will not compell her to discover w<sup>r</sup> married or not.

“ *South Sea Company & Doliffs, nil.*

“ *The p<sup>sons</sup> stending in y<sup>e</sup> place of y<sup>e</sup> orig<sup>t</sup> owner will have y<sup>e</sup> same privilege.*

“ *Mr. Browning, ad idem.*

“ *Mr. Att.-General, pro quer.* Plt. claims as heir in tail, under a settlement.

“ 2 answers.

“ 1. This is not to discover a forfeiture. Only to show that she never was entitled to y<sup>e</sup> estate.

“ Not like y<sup>e</sup> case of taking away an estate once vested, by a condition prece<sup>d</sup>ed<sup>t</sup>.

“ Like y<sup>e</sup> case of a bastard, or an alien.

“ Bankruptcy must be discov<sup>d</sup>, if there be notice of it.

“ The case put of a widow is a limitation, & therefore doubt of y<sup>e</sup> law.

“ As to y<sup>e</sup> term whereby y<sup>e</sup> £5000 is charged, she knew w<sup>r</sup> she was a Papist or not, & y<sup>n</sup> took y<sup>t</sup> provision with<sup>t</sup> title.

“ 2. Supp. this were a forfeiture.

“ It is not their own forfeiture, but y<sup>e</sup> forfeiture of some g<sup>r</sup> p<sup>'</sup>sons w<sup>ch</sup> co<sup>d</sup> defeat their title.

“ *Mr. Faz.*,\* *ad idem.*

“ *A man shall not be obliged to accuse himself, but this is not to discover any p<sup>'</sup>sent disability.*

“ *A man not obliged to discover a p<sup>'</sup>sent disability in himself.*

“ *A man claims by lease, and plts. fro<sup>'</sup> a ten<sup>t</sup> in tail with<sup>t</sup> a fine or recovery. A defect in y<sup>e</sup> orig<sup>t</sup> title.*

“ *Mr. Milles.* A fraud upon y<sup>e</sup> Act of Parliament.

“ All frauds subject y<sup>e</sup> estate to forfeitures.

“ Plea allowed.”

The case of *More contra More* arose out of a matter which, even in our day, has not wholly ceased to be a subject of litigation and appeal to our courts of each kind,—that of a quarrel between husband and wife. Lord Hardwicke's notes of the arguments in the case are very full ; and a skeleton of the judgment, as pre-

\* Fazakerley.

pared by him, is among them, which serves to afford an idea of his mode of dealing with an important and complicated question of this nature. The manner in which he subdivides and analyzes the different points in the case, will be here observed :—

“ Sir Richard Francis More, Bart., Plt.

“ Dame Augusta Grd. More, & y<sup>e</sup> } Def<sup>ts</sup>.  
Earl of Scarborough, (a Trustee,) }

“ Bill to stay proceed<sup>gs</sup> on an ejectm<sup>t</sup>, bro<sup>t</sup> to turn plt. out of poss<sup>n</sup> of an est<sup>e</sup> for non-paym<sup>t</sup> of an annuity of £100 per annum.

“ *Mr. Att.-Gen<sup>l</sup>, pro quer.* Marr<sup>d</sup> in 1707. Portion of £6000. £100 per annum pin-money. 20 children—11 living.

“ Lived together till 1728, y<sup>n</sup> she eloped.

“ 1734, plt. commenced a suit for restitution of conjugal rights. Febr., 1734, excommunication.

“ No p<sup>t</sup>ence of reason for her to leave her husb<sup>d</sup>, and clope into France.

“ She has broke y<sup>e</sup> contract on her part. *Colemore & Colemore.* 18 Oct., 1707, settlem<sup>t</sup> on y<sup>e</sup> marr<sup>e</sup> of plt. & his wife. In cons<sup>n</sup> of marr<sup>e</sup>, & portion of £6000, conveys <sup>to</sup> trustees to uses, as to part to Earl of Sc. & Henry Browne for 99 years, if husb<sup>d</sup> & wife shall so long live, on trust to raise & pay £100 per ann. for y<sup>e</sup> sep. use of y<sup>e</sup> wife, for her personal and partic. use, to be paid half-yearly, free fro’ taxes & deductions.

“ Nov. 30, 1728, Rect. for £300 in full for anny to Lady Day last, A.M.

“ 13 Dec. 1728, Rect. for £50 for her own use, A.M.

“ *Mary Young.* [States in her deposition, that Sir R. & Lady More] lived together 21 years. 14 child<sup>n</sup> born. In Jan<sup>y</sup> 1728, Lady More eloped.

“ For 20 years, S<sup>r</sup> R. & his Lady behaved very well to

each other. Y<sup>t</sup> S<sup>r</sup> Richard behaved with a partic. tenderness to her. Kept a good house—did not swear & curse—very good tempered ; if ever angry, soon reconciled. Lived at home. Lady More of a peevish, uneasy temper.

“ *Tho. Lawrence.* Appeared a very loving couple.

“ Lady More of a fretful, uneasy mind & temper.

“ Believes she kept a private correspondence. Frequently sent him for letters to y<sup>c</sup> P. House at Wantage, & bad him let nobody know it.”

Other witnesses deposed to the same effect. One of them states—

“ S<sup>r</sup> Rich<sup>d</sup> always in good humour w<sup>n</sup> his wife was so. Never heard him curse & swear but once, & y<sup>t</sup> at his bailiff, w<sup>n</sup> his wife was not p<sup>s</sup>ent.

“ Observed Lady M. to be of a restless, uneasy temper, & resentful ag<sup>st</sup> her husband. Decl<sup>d</sup> if they did part, ’twould be like pt’ing with drops of blood.”

Another witness states that when Lady More eloped, Sir Richard

“ Took his leave of her, & bid her good night. [she] Went in y<sup>c</sup> coach & six, about 2 in y<sup>c</sup> morning. Coach & serv<sup>ts</sup> returned 3 days after. Dismissed them, & ordered her own serv<sup>ts</sup> to lye in y<sup>c</sup> room.

“ Next morning found plt. crying & bewailing (as he called it,) her wretched cond<sup>n</sup>. Infers fro’ his behaviour y<sup>t</sup> she withdrew with<sup>t</sup> his knowledge and consent.”

In another of the depositions it is stated that Lady More

“ Had not plts. consent to her going away, but went away whilst he was in bed—desired her [witness] to keep it secret. When she came to wish her good night, she behaved herself pretty well.

“ Lodged privately in Piccadilly & S<sup>t</sup> James’s Market,

for some time—told her y<sup>t</sup> y<sup>e</sup> reason was to prevent her husb<sup>d</sup> finding her out.

“Went to Dover, & so to France. After staying 2 months with her at Calais, she left her.

“Plt. behaved himself tow<sup>ds</sup> his wife & child<sup>n</sup> in a tender & affectionate manner.

“*Def<sup>t</sup> sometimes corresponded privately without y<sup>e</sup> privity of her husb<sup>d</sup>. Has sent letters to y<sup>e</sup> Post at 4 in y<sup>e</sup> morning, & ordered y<sup>e</sup> serv<sup>t</sup> to return before her husb<sup>d</sup> was up.* (“Not charged in y<sup>e</sup> bill.)

“Believes some of their quarrells arose fro’ y<sup>t</sup> cause.”

“To one gentleman she expressed her fears that her husb<sup>d</sup> wo<sup>d</sup> forcibly take her money from her.

“*Mr. Browne, pro def. La<sup>y</sup> Moor.*

“No ground for y<sup>e</sup> co<sup>t</sup> to interpose in an extra<sup>y</sup> manner to stay proceedings at law.

“(Admitted y<sup>t</sup> Mrs. Aglewand y<sup>e</sup> mo<sup>r</sup> died in 1713.)

“Plts. expectations fro’ her made him keep decent measures.

“W<sup>n</sup> y<sup>t</sup> was over he broke out.

“Repined at y<sup>e</sup> little annuity of £100 p<sup>r</sup> ann. & y<sup>e</sup> legacy her mo<sup>r</sup> left her.

“She swears by her answer, y<sup>t</sup> was forced to go away for y<sup>e</sup> preservation of her health & her life.

“Plt. took care to conform his public behaviour to w<sup>t</sup> was proper; but in private used her ill.

“Sir R. More is plt.—Lady More only takes advantage of y<sup>e</sup> law. Seeks no aid here.

“This is called pin-money, but as she is a foreigner it sho<sup>d</sup> be consid<sup>d</sup> as a provision fro’ other accidents.

“*No proof of any application to her to return home.*

“*When she first went away, she had it not in her intention to go abroad. Was informed y<sup>t</sup> he intended to seize her & lock her up.*

*“As to y<sup>e</sup> excom. for contumacy, 'tis subject to our ejectment.*

“No notice given to her, or any attorney or agent for her.

“Def<sup>t</sup>—a purchaser of this for val. consid<sup>d</sup>—y<sup>e</sup> husb<sup>d</sup> has consented to it in all events, & contracted to pay it. Given her a legal remedy for it.

*“As to y<sup>e</sup> secret corresp<sup>ce</sup> by letter with<sup>t</sup> y<sup>e</sup> privity of S<sup>r</sup> R. M., 'tis not charged in y<sup>e</sup> bill.*

*“Sir R. M. has p<sup>d</sup> y<sup>e</sup> annuity since she went away.*

Depositions of witnesses on the defendant's part were then referred to, which stated that there had been warm disputes betw<sup>n</sup> them for some time; & also

“Differences ab<sup>t</sup> housekeeping & table.

“Behaved herself as a prudent wife & mo<sup>r</sup>, & kept very little company.

“Plt. did not oblige y<sup>e</sup> serv<sup>ts</sup> to comply with her commands.

“Differences also arose ab<sup>t</sup> the pin-money, & the legacy left to Lady More by her mother.

“Declaration in ejectm<sup>t</sup> deliv<sup>d</sup> in Easter term, 1734.

“Pet<sup>n</sup> of plt. Sir R. F. More states y<sup>e</sup> Mo<sup>rs</sup> will by w<sup>ch</sup> a moiety of her pers<sup>l</sup> est<sup>e</sup> [given] to Lady More.

“£1500 thereof to her sep. use.

“This is a suit relating to y<sup>e</sup> mother's p<sup>sonal</sup> estate.

*“Complains of Lady M's private elopement with<sup>t</sup> his knowl. or consent. Y<sup>t</sup> he pays her £100 per ann. pin-money, & y<sup>t</sup> he is ready to continue y<sup>e</sup> pay<sup>t</sup> of y<sup>e</sup> £100 p<sup>r</sup> ann. as she directs—y<sup>t</sup> she has preferred a petition for pay<sup>t</sup> of y<sup>e</sup> principal £1500 to her.*

“Ans<sup>d</sup> 15 July, 1729.

“22 Oct. 1729. Order on both petitions—dismissing her petition—on his petition, orders y<sup>e</sup> principal of y<sup>e</sup> Mo<sup>rs</sup> legacy to be placed out at interest.

“ *Mr. Faz. pro def.*

“ The bill *primæ impressionis*.

“ The def<sup>t</sup> has a legal right. This is y<sup>e</sup> absolute unconditional agreem<sup>t</sup> of y<sup>e</sup> p<sup>t</sup>ies.

“ The quest<sup>n</sup> of any o<sup>r</sup> jurisd<sup>n</sup>.

“ There ought to be very strong circumstances to induce y<sup>e</sup> court to interpose. Many material circumst<sup>s</sup> may be so secret as to be incapable of proof.

“ Y<sup>e</sup> separate estate of y<sup>e</sup> wife, y<sup>e</sup> occasion of y<sup>e</sup> whole.

“ *Cur.\** 2 quest<sup>ns</sup>.

“ 1. Whe<sup>r</sup> prest bill proper on any grounds. ?

“ 2. Suppos<sup>s</sup> y<sup>t</sup>, whe<sup>r</sup> a suff<sup>t</sup> found<sup>n</sup> for relief on y<sup>e</sup> merits & proofs in y<sup>e</sup> cause ?

“ 1. *Primæ impressionis*, y<sup>e</sup> objection of Tr<sup>ee</sup> of wife—a legal est<sup>e</sup> & remedy.

“ Don’t come into this Court for relief or assistance.

“ Don’t know any preced<sup>t</sup>.

“ Some cases have been where y<sup>e</sup> wife has sought relief.

“ Don’t give an opin<sup>n</sup> to bind myself, but incline to think there may be cases where y<sup>e</sup> husb<sup>d</sup> may come p<sup>r</sup>perly as to plt.

“ Great misbehaviour in y<sup>e</sup> wife.

“ Criminal conversation—not appear<sup>g</sup> in a suit [in] y<sup>e</sup> p<sup>r</sup>per court.

“ Pin-money & such sep<sup>te</sup> provis<sup>s</sup> not intended to encourage y<sup>t</sup>.

“ Must be partic. portion—issue sep.

“ W<sup>r</sup> suff<sup>t</sup> foundation here.

“ 2. Not so here—don’t like y<sup>e</sup> evidence of private correspondence.

\* *Per Curiam*, i.e., judgment delivered by the Court.

“ Not being charged, can’t take notice of it  
—looks as if intended to rest an  
assertion with<sup>t</sup> ground.

“ 2 causes.

“ 1. Elopement—going away with<sup>t</sup> cause.

“ 2. Not appear<sup>g</sup> in y<sup>e</sup> proper court.

“ Standing out to excom. for contumacy.

“ 1. Proofs.

“ Quarrels & differences—immaterial.

“ The uncasiness of y<sup>e</sup> husb<sup>d</sup> as to y<sup>e</sup> pin-  
money, & £1500 left by y<sup>e</sup> mo<sup>r</sup> for her  
sep. use.

“ Not a just ground in a court of justice for  
a separation – but possibly such provi-  
sions may be intended for such dark cases.

“ 2. Excomm. not to be approved.

“ 3. No proof of application to return before y<sup>e</sup> bill.

“ 4. Pay<sup>t</sup> of y<sup>e</sup> annuity since y<sup>e</sup> going away.

“ 5. Offer in y<sup>e</sup> petition to continue y<sup>e</sup> pay<sup>t</sup> of y<sup>e</sup>  
annuity of £100 p<sup>r</sup> ann.

“ If y<sup>e</sup> wife eloped, & was guilty of crim. conn.  
she wo<sup>d</sup> have her jointure.

“ *Cur.* Declare that on y<sup>e</sup> proofs and circumst<sup>s</sup> in this  
cause there is not a suffi<sup>t</sup> foundation for y<sup>e</sup> gen<sup>l</sup> re-  
lief prayed by y<sup>e</sup> bill against y<sup>e</sup> paym<sup>t</sup> of y<sup>e</sup> annuity  
or rent charge of £100 per ann., but y<sup>t</sup> y<sup>e</sup> plt. is  
entitled to be relie.ed against y<sup>e</sup> cjectm<sup>t</sup> already  
bro<sup>t</sup> on y<sup>e</sup> terms hereinafter mentioned. Therefore  
decree y<sup>t</sup> y<sup>e</sup> master take an acc<sup>t</sup> of y<sup>e</sup> arrears of y<sup>e</sup>  
annuity, & tax y<sup>e</sup> def<sup>t</sup>s costs at law ; & until paym<sup>t</sup>  
of what shall be found due for such arrears & costs,  
at such time & place as y<sup>e</sup> master shall appoint, &  
continuing y<sup>e</sup> growing payments, y<sup>e</sup> injunct<sup>n</sup> be  
continued<sup>d</sup> But in default of paym<sup>t</sup> of y<sup>e</sup> arrears &

costs, y<sup>e</sup> inj<sup>n</sup> to be absolutely dissolved, & y<sup>e</sup> bill dismissed with costs. And in case y<sup>e</sup> plt. shall make default in pay<sup>t</sup> of y<sup>e</sup> growing pay<sup>ts</sup> of y<sup>e</sup> annuity of £100 per ann., y<sup>e</sup> def<sup>t</sup> & wife to be at liberty to apply to y<sup>e</sup> court for further directions as there shall be occasion."

It is stated in Atkyns's report of this case, that after the decree was pronounced, the Attorney-General said this was so uncommon a case, that probably it would never happen again. Upon which the Lord Chancellor replied, "If you think so you must have a very good opinion of the ladies, for—

" In amore hæc omnia insunt vitia : injuriæ,  
Suspiciones, inimicitiae, induciæ,  
Bellum, pax rursum."

The outline of the judgment which follows from Lord Hardwicke's note-books, belongs to that delivered by him, in the case of *University College contra Dr. Stevens*, relative to a legacy, which had been left by Dr. Radcliffe to establish a travelling fellowship for a student of physic, and to which Dr. Stevens had been elected, but had only travelled during a part of the time that he had held the fellowship, on account of ill-health.

The following application was therefore made to the court :—

" *Mr. Att. Genl, pro Rel.* Informat<sup>n</sup> to compell Dr. Stevens to return to University Coll. what he has received, & to have y<sup>e</sup> directions of y<sup>e</sup> court as to y<sup>e</sup> chambers given under Dr. R.'s will, both as to y<sup>e</sup> manner of holding and y<sup>e</sup> repairing of y<sup>m</sup>.

" *The Lord Chancellor.* 3 quest<sup>ns</sup>.

" 1. What y<sup>e</sup> inter<sup>n</sup>tion, & true construction of Dr. Ratcliffe's will ?

“ 2. W<sup>r</sup> that has been complied with by def<sup>t</sup>?

“ 3. If not, w<sup>r</sup> y<sup>e</sup> non-compliance with it has been such as to give a right to plaintiffs to recover back y<sup>e</sup> money in a court of eq<sup>y</sup>.

“ Obj. 1. Accepting it with a fraudulent intention.

“ 2. Not p<sup>r</sup>forming y<sup>e</sup> direction of y<sup>e</sup> will.

“ 1. Condition.

“ 2. Consideration.

“ 3. Trust executory.

“ *Acceptance of resignation.*

“ *Tr<sup>ees</sup> might have insisted upon it.*

“ 2nd p<sup>t</sup> as to Dr. Kirby.

“ Inform<sup>n</sup> dismissed as to Dr. Stevens, with<sup>t</sup> costs.

“ As to Dr. Kirby,\* dismissed with costs.†”

The following notes of an argument, and the judgment in the case, are from Lord Chancellor Hardwicke's papers.

“ *Junii 1<sup>o</sup> Petitions.*

“ Mary Edes, infant, by John Tamlyn, her next friend, plt.; Tho. W<sup>m</sup> Brereton, Esq<sup>re</sup>, & Dorothy Br., def<sup>ts</sup>.

“ On y<sup>e</sup> petit<sup>n</sup> of Tho<sup>s</sup> W<sup>m</sup> Brereton, uncle & guardian of y<sup>e</sup> inf<sup>t</sup> for marrying y<sup>e</sup> infant clandestinely, without leave of y<sup>e</sup> Court.

“ Petitioner's affidavit.—Inf<sup>t</sup> within y<sup>e</sup> age of 16 years; her fortune £8000.

“ 30 Nov. 1727. Decree appointing a guardian, & giving directions touching y<sup>e</sup> inf<sup>ts</sup> estate.

“ *Mr. Fazakerly, pro* Pearson, y<sup>e</sup> husband.

“ *Pearson is under age, ab' 20. Petit<sup>r</sup> did not take proper care of y<sup>e</sup> inf<sup>t</sup>, kept her under too much restraint. Intended to marry her to his own son.*

\* Trustee of Dr. Radcliffe's will.

† For the particulars of this case *vide* Atkyns's Reports.

“ *Pearson did not know of y<sup>e</sup> proceedings of y<sup>e</sup> court ; therefore offended innocently.* I admit y<sup>t</sup> not an absolute excuse.

“ *The punishm<sup>t</sup> of y<sup>e</sup> husb<sup>d</sup> will be a punishm<sup>t</sup> of y<sup>e</sup> wife too.*

“ *Charles Pearson.* Desired Lord Ossulston to assist him to procure a clergyman to marry him.

“ Y<sup>t</sup> he did not know she was under y<sup>e</sup> care of y<sup>e</sup> court.

“ *Mary Pearson.* Y<sup>t</sup> petitioner proposed to her to marry his son.

“ *Mr. Craister.* Mr. Cæsar’s case. He was not committed because it wo<sup>d</sup> be a punishm<sup>t</sup> to y<sup>e</sup> lady too.

“ *As to Patman & Richards.* It don’t appear they knew of y<sup>e</sup> intention of her going away. *So of Touch,\** nor doth it appear she was present at y<sup>e</sup> marriage.

“ *Mr. Noel, pro Lord Ossulston.*

“ Only an inadvertency in sending a clergyman to marry them.

“ *In cases of contempts of orders of y<sup>e</sup> court, there must be service of them.* Admit not allways so here.

“ *Where an act illegal, y<sup>e</sup> party is answerable for all y<sup>e</sup> consequences.* Here y<sup>e</sup> act innocent,

“ *Lord Ossulston’s affid<sup>t</sup>.* Admits y<sup>t</sup> at y<sup>e</sup> request of Pearson he procured Barry, y<sup>e</sup> parson, to marry them.

“ Denies knowledge of any orders of y<sup>e</sup> court.

“ It is positively sworn by y<sup>e</sup> petitioner, y<sup>t</sup> y<sup>e</sup> marriage was bro<sup>t</sup> abo<sup>t</sup> by contrivance of Pearson with Lord Ossulston y<sup>t</sup> Lord Ossulston went to London & fetched y<sup>e</sup> parson fro’ y<sup>e</sup> Fleet, who had 100 guineas for marrying y<sup>m</sup>; & y<sup>t</sup> Lord Ossulston was

\* Mrs. Pearson’s maid.

present at y<sup>e</sup> marriage, & gave y<sup>e</sup> lady as father in a room at Uppark. None of these facts denied by his affid<sup>t</sup>.

“*Per Cur.* Let Pearson, Mary Touch, y<sup>e</sup> maid-serv<sup>t</sup>, & Lord Ossulston, stand committed to y<sup>e</sup> Fleet for their contempt.

“Barry, y<sup>e</sup> parson, was committed by a former order.”

Several other cases which came before Lord Chancellor Hardwicke arose out of this same old but not infertile topic of litigation—clandestine marriages. Another, entitled *More v. More*, was not only a name-sake of the former suit on this matter, but also exhibited further marks of its affinity, by the nature of its subject-matter. There was, however, this marked difference between the two cases. In the first *More v. More*, one of the parties at least exhibited rather undue symptoms of a desire to sever the nuptial knot. In the second *More v. More*, they both manifested too untoward a haste to be united together. Possibly, as time rolled on, their condition might become assimilated more nearly to the unhappy couple in the former of these cases. A curious custom was alluded to by Lord Hardwicke, according to the report in Atkyns, while giving judgment in the second *More v. More*, as at that time prevalent among the proctors in Doctors’ Commons, of unceremoniously hawking about marriage licenses, and which seem to have excited irresistible impulses in the minds of impetuous and unwary persons suddenly to enter into the holy estate, however they might have been previously disposed on this important subject.

The Lord Chancellor here expressed himself as persuaded of the necessity of introducing some legislative

measure for the repression of matrimonial freaks and irregularities of this unpleasant and very inconvenient nature. A proposal of this kind he some years afterwards brought forward and carried, and on the preparation and framing of which his mind was probably, at the period now referred to, intent.

## CHAPTER VI.

1740—1742.

PURCHASE OF WIMPOLE BY LORD CHANCELLOR HARDWICKE—MARRIAGE OF MR. P. YORKE—CHARLES YORKE—CABINET DISCUSSIONS—THE CHANCELLOR'S REMONSTRANCE TO WALPOLE RESPECTING THE JUDICIAL APPOINTMENTS—DEBATES ON THE ADDRESS, ADMIRAL VERNON'S AND HADDOCK'S INSTRUCTIONS, THE AUGMENTATION OF THE ARMY, THE MOTION TO DISMISS WALPOLE, PRIVILEGE, AND THE PRAGMATIC SANCTION—DISSOLUTION OF PARLIAMENT—LORD MACCLESFIELD AND LORD HARDWICKE—THE CHANCELLOR AND THE DUKE OF NEWCASTLE—EXTRAORDINARY CONDUCT OF THE KING—DR. BIRCH AND LORD HARDWICKE—MEETING OF THE NEW PARLIAMENT—FALL OF WALPOLE—NEW MINISTRY, WHICH RETAINS LORD HARDWICKE AS THEIR CHANCELLOR—JUDGMENTS OF LORD CHANCELLOR HARDWICKE IN GYLES CON. WILCOX—BROOKE CON. GALLY—POPE CON. CURL—WALMSLEY CON. BOOTH.

AN event in Lord Hardwicke's career, both of interest and importance, occurred at this period, in the purchase by him of the Wimpole estate in Cambridgeshire from the Earl of Oxford.

The acquisition of a large landed property forms in many respects a great epoch in the history of a family, which thus becomes identified with a particular locality. This constitutes in several ways the real foundation of the new house, which, like a people, now has its own territory, with which not only the present, but all future generations become identified. The race is thus furnished with a home, and a central point of union. The individual spot chosen is not, without its influence; and in the present case the proximity of the new do-

main to the University of Cambridge had an important effect on several of the transactions of its possessors.

It appears from letters among his correspondence, that Lord Chancellor Hardwicke had for some time been desirous of obtaining a suitable investment in land for the money which, by his great professional and official labours, he had now acquired. Hardwicke was probably too small an estate to meet the wishes of the Chancellor, as the whole property only yielded about £1000 per annum. We may suppose that when Lord Hardwicke purchased the Gloucestershire estate he had but a distant hope of becoming Lord Chancellor, or of being master of the great wealth he was now amassing. Besides this, his eldest son was about to form an alliance with the heiress of a noble family of vast property, which afforded a prospect of adding materially to the possessions of the house of Hardwicke. The political influence which the Wimpole estate conferred, from its owners having long held the lord lieutenancy of the county of Cambridge, and usually returned one of its members to the House of Commons; the agreeable proximity of this stately mansion to the celebrated seat of learning, with which several members of the Chancellor's family were now connected, and its convenient distance from the metropolis, contributed to form inducements with the Chancellor to become the proprietor of this magnificent domain.

Lord Hardwicke's wish was, originally, to have purchased some property in the neighbourhood of Dover, adjoining the small family estate which had descended to him on his father's death. For this, however, after long waiting, no opportunity was afforded him of doing. As we have seen, he also at this time possessed a mansion at Carshalton in Surrey, which formed a pleasant

occasional retreat, when his severe labours permitted this.

The sale of the estates of the Earl of Oxford, which were in the county of Cambridge, and comprised the manor of Wimpole and some adjacent parishes, including the family mansion and park adjoining, offered an opportunity to Lord Hardwicke such as he desired, and he accordingly became the purchaser of this property.

Wimpole is situate about eight miles north-west of Royston, and about nine south-west of Cambridge. In 1710 the estate was purchased by John, Duke of Newcastle, from the Earl of Radnor. The Duke's only daughter and heir married Edward Earl of Oxford; and they sold the estate to Lord Chancellor Hardwicke.

The house is a spacious brick and stone mansion, the centre of which was built by Sir Thomas Chicheley, whose family possessed the estate during the seventeenth century. The wings were added by Lord Oxford; the house was newly fronted, and the principal apartments fitted up, by Lord Chancellor Hardwicke.

This extensive edifice occupies an area of exactly two acres. The length of the building is about 420 feet. The gallery, constructed by Lord Oxford out of three small rooms, is an elegant apartment in the Italian style, and is sixty-five feet long, and twenty-four wide. It was intended by that nobleman to contain the famous collection of Harleian manuscripts, now in the British Museum.

The chapel, which forms the east wing of the centre of the house, was also built by Lord Oxford. The ceiling and walls, and also a fine altar-piece, representing the Offering of the Wise Men, were painted by Sir James Thornhill. Both the design and execution are

exceedingly beautiful, and the whole is considered one of his most successful works of art.

The house contains a valuable collection of pictures by the old masters, including some by Rubens, Holbein, Cuyp, Salvator Rosa, Teniers, and Titian. Among the portraits in the library is that of Matthew Prior, who was a frequent visitor at Wimpole in Lord Oxford's time; also those of Richard, Earl of Warwick, by Vandyke, and a fine one of Ben Jonson, by Cornelius Jansen. In the dining-room are two very admirable portraits, by Sir Joshua Reynolds, of the second Earl of Hardwicke and of the Marquis of Rockingham. This room contains also portraits of King George the Second, King George the Third, Queen Charlotte, Mr. Charles Yorke, Sir Robert Walpole, Lord Walpole, the Duke of Newcastle, Mr. Pelham, Lord Chesterfield, Lord Lyttelton, Lord Anson, Lord Hampden, Lord Chancellor Somers, Lord Chancellor Cowper, Lord Dover, Archbishop Herring, Archbishop Secker, and Stanislaus, King of Poland. There are two portraits of Lord Chancellor Hardwicke in the house; one in the room last-mentioned, by Allan Ramsay, and the other in one of the drawing-rooms, by Hoare, of Bath. They both represent him in his official robes, but appear to have been taken at very different periods. The latter, in the opinion of Lord Chancellor Hardwicke, was the most perfect likeness of that distinguished judge. Of the former of these portraits, an excellent copy has lately been presented by the present Earl of Hardwicke to the Benchers of Lincoln's Inn, and now graces their magnificent hall. It is the production of Mr. Buss.

In different rooms are also to be seen portraits of the first Countess of Hardwicke when Lady Yorke; of

Sir Joseph Jekyll, another of Lord Somers ; one of Mr. John Yorke, by Sir Joshua Reynolds ; another of George the Second, one of his Queen, of George the First, Lord Chief Justice Holt, Sir Matthew Hale, Chief Justice Wilmot, Sir Isaac Newton, Dr. Samuel Clarke, Pope, the first and second Mrs. Charles Yorke, Lady Anson, Lady Margaret Heathcote, Bishop Yorke, Bishop Warburton, and another of Lord Anson. There is also an excellent portrait of Spelman, which was bequeathed to Lord Chancellor Hardwicke by a descendant of that celebrated lawyer and antiquary. A full-length portrait of Bishop Burnet, by Sir Godfrey Kneller, which was painted expressly for Lord Chancellor Somers, and is one of that celebrated painter's finest works, adorns the library. In one of the apartments is a collection of exquisite drawings in crayon by Lady Anson, from different pictures by the old masters. There is also a painting by Sir James Thornhill, representing the House of Commons in his time, in which are portraits of himself, Mr. Speaker Onslow, and Sir Robert Walpole. In another room is a picture representing the Court of Chancery in Lord Chancellor Macclesfield's time, which contains portraits of his Lordship, Sir P. Yorke, Serjeant Pengelly, and other distinguished advocates of the day.

The library is a very noble and spacious apartment, and contains a large and valuable collection of books, formed principally by Lord Chancellor Hardwicke and his son and successor in the title. The family papers, and various interesting manuscripts relating to different periods of history, which were collected mainly by the second Lord Hardwicke, are deposited in a small room which is fire-proof.

In the best bed-room is still to be seen a handsome

state bed, the hangings of which were ingeniously constructed by the first Countess of Hardwicke, who introduced with the embroidery some of the state purses which were then annually presented to the Lord Chancellor. The real pearls which decorate the purses, and the brilliancy of the gold embroidery, testify to the magnificence of former days.

Wimpole has been honoured by the visits of two Queens of England. Queen Anne staid here, while her minister, Lord Oxford, was its possessor; and her present most Gracious Majesty paid a visit to it in 1843.

There is also a tradition in the Hardwicke family that King George the Second once visited Wimpole, during the time that Lord Chancellor Hardwicke possessed this noble mansion; but of this I can find no account, nor any reference to it, among the family papers.

The deer park is spacious and picturesque, and is adorned with a fine sheet of water. It is well wooded, and the ground to the north considerably undulated. To the south is an extensive plain ornamented with handsome timber, and commanding the vista of an avenue of elms, three miles long.

The parish church, which is within a stone's throw of the eastern wing of the house, was rebuilt by Lord Chancellor Hardwicke, in 1749, after a design by Flitcroft. The painted windows in the family pew contain several ancient coats of arms in stained glass, by Peckitt, belonging to the Yorke family, and showing its alliances with different branches and which were brought from the church of the parish in Wiltshire, where the Chancellor's ancestors, as already mentioned, were for some time located.

The Chicheley chapel, which is so called from its con-

taining a monument to Sir Thomas Chicheley, who died in 1616, remains on the north side of the church, and is the only ancient portion of it. It was repaired by the Earl of Oxford in 1732, and contains the vaults and monuments of the Hardwicke family. Those of Lord Chancellor Hardwicke, and of his son Lord Chancellor Charles Yorke, were designed by J. Stuart, and executed by Scheemakers. The former has medallions of the Lord Chancellor and his Countess, on a sarcophagus of Sienna marble. There are also monuments of the second Earl of Hardwicke, and of Lord Dover. A handsome monument to the late and third earl has recently been erected, by his widow, which was executed by Mr. Westmacott. In the chancel is a memorial to the late Sir Joseph Yorke, the father of the present noble Earl.

Matthew Prior lived much at Wimpole, while Lord Oxford was its owner, and died in the house. Through that nobleman's interest he was sent ambassador to Paris; and some very fine damask which Louis XIV. presented to Prior, and which the latter gave to Lord Oxford, still forms the curtains in the library.

The correspondence which follows, and which took place on the occasion of completing the purchase of the estate, is interesting, as showing the good feeling and harmony with which the matter was conducted throughout. Here at least, on an occasion so likely for its display, there is nothing of that avaricious and grasping disposition exhibited, by which the calumniators of the Chancellor would have us suppose he was distinguished. On the contrary, his conduct in this instance might be said to be as useful in setting an example to all who are concerned in transactions of this nature, as the judgments which he pronounced on the subject of real property law, were valuable to guide them in the more

intricate though sometimes not less perplexing part of the business.

The first of the letters is from the Earl of Oxford to the Lord Chancellor.

*“ Dover Street, July 30th, 1740.\**

“ MY LORD,—I have enclosed sent to your Lordship a list of a few things at Wimpole, which I desire you will please to accept. They are not in the inventory deliv<sup>d</sup> to y<sup>r</sup> Lordship, & as some of them were made to the places, I thought it would not be improper to leave them, nor unacceptable to you to have them left.

“ Give me leave to wish your Lordship & your family, all health & happiness. May your Lordship enjoy many more happy years at Wimpole than I have had minutes, & they were very many.

“ And now, my Lord, as a true lover of my country, & from an honest heart, give me leave to pour out my most ardent wishes for your long life & health, to discharge the duty of that important post you are so happily for this nation placed in, & do so greatly fill. A subject of this kind I could say much upon, but I must consider to whom I am writing, & will only say I am with true respect, & great esteem,

“ My Lord,

“ Your Lordship's most obdt, & most humble Servant,

“ OXFORD.”

The Lord Chancellor's answer was as follows:—

*“ Powis House, July 31st, 1740.†*

“ MY LORD,—I want words to express the deep & grateful sense I have of the honour, which your L<sup>d</sup>ship has done me, by your most obliging & polite letter.

\* Hardwicke MSS., Wimpole.

† Ibid.

Nothing can equal your kind professions of regard for me, except your friendly wishes for my welfare. I am too sensible how unmerited all this goodness is, & can aspire at nothing more hon'ble for myself than to desire the esteem of persons of your Lordship's distinguished worth & dignity.

"If anything in Wimpole was ever agreeable to you, it would become much more so to me, if you could still make it at any time contributory to your pleasure.

"As to the generous present which your Lordship is pleased to make me, I am sensible how little pretence I have to accept it; & yet I know not how to decline such a mark of that good harmony with which this whole affair has been carried on between us. Permit me to return you my sincere thanks, & most ardently to wish perfect health, & lasting prosperity to yourself, & your noble family.

"I am, with the greatest respect & truth,

"My Lord,

"Yr L'dship's most ob'd', & most humble Servant,

"HARDWICKE."

On Thursday, the 22nd of May in this year, Mr. Philip Yorke, the eldest son of Lord Chancellor Hardwicke, married Miss Jemima Campbell, only daughter of John, Earl of Breadalbane, and grand-daughter of the Duke of Kent. A memorandum in Lord Hardwicke's handwriting states that the ceremony was performed "about one o'clock in the afternoon in the Duke of Kent's presence, at his Grace's lodgings at Brompton, his Grace giving her in marriage." The Chancellor's friend, Dr. Seeker, then Bishop of Oxford, officiated on this occasion. This learned prelate is indeed reported to have rendered his good offices in an earlier stage of this

affair, and to have been the means of bringing about the match.

The Duke of Kent was, during the course of this year, created Marquis Grey, to him and the heirs male of his body; and, in default of such issue, the dignity of Marchioness was limited to his grand-daughter, and her heirs male. His Grace died this year, and was succeeded by his grand-daughter, who thereupon became Marchioness Grey, and Baroness Lucas of Crudwell. The mansion and estate of Wrest belonged to her, where she and Mr. Yorke principally resided, and to which, owing to its contiguity to the metropolis, the Lord Chancellor was often wont to retire for a few days, whenever an opportunity offered of escaping from the fatigues and cares of office, and many of his letters are dated at this place. Mr. Charles Yorke, and the other members of the family, were also very frequent guests here.

The extract which follows from a letter by Horace Walpole, son of Sir Robert Walpole, to Mr. Conway, shows the feelings entertained of the prosperous career and condition of the Chancellor and his family, at this period.

“Harry, what luck the Chancellor has! first, indeed, to be in himself so great a man; but then in accidents: he is made Chief Justice and peer, when Talbot is made Chancellor and peer: Talbot dies in a twelvemonth, and leaves him the seals, at an age when others are scarce made solicitors; then marries his son into one of the first families of Britain, obtains a patent for a marquissate, and eight thousand pounds a year after the Duke of Kent’s death; the Duke dies in a fortnight, and leaves them all! People talk of fortune’s wheel, that is always

rolling : troth, my Lord Hardwicke has overtaken her wheel, and rolled along with it.”\*

The following admirable letter of congratulation, written by Mr. Charles Yorke, then a student at Cambridge, to his brother on his marriage, is believed to be the first of that gifted person's epistles which are now extant.

“ *Cambridge, May y<sup>e</sup> 27th, 1740.*†

“ DEAR BROTHER,—It was with the greatest pleasure I received the news of your alliance with the Duke of Kent's family, and the rather because all your friends express an equal satisfaction in it. I shall neither compliment you on the superior quality of the lady, nor congratulate you on the greatness of her fortune. I leave these copious topics for others to enlarge upon ; and tho' they must be confessed of very singular importance, yet the pleasure which I take in the happiness that attends you, arises chiefly from reflections of a different nature. I consider the settlement which you have made in life as wisely founded upon prudence and choice ; I consider the advantages of nobility, and a fair estate, as what you are only possessed of in common with many persons ; but the felicity which is more particularly yours is, that the lady you have married, is not only one whom you have obliged yourself to approve of, but such an one as will deserve your approbation and highest regard.

‘ Atque utinam hæc maneat nullis laxanda querelis  
Copula, quin semper vobis nova gaudia surgant,  
Semper primus amor.’

“ If, upon an occasion so full of pleasing circumstances, it were possible for me to feel any anxiety, it wou<sup>d</sup> proceed, not from diffidence or distrust, but from the tenderest concern for your welfare. You are now

\* Correspondence of Horace Walpole. † Hardwicke MSS., Wimpole.

thrown at once into a new sphere of life, where much will be expected from you. You are hurried into the eyes of the public, from the studies of retirement: into the scene of action, from that of speculation. But such is the goodness of your understanding, and such the propriety of your behaviour, that I am persuaded you will abundantly answer the hopes of the noble family you are entered into, and that opinion which the world has so favourably conceived of you. I am, dear brother,

“ Yours, (as you know always,)

“ Most affectionately,

“ CHA. YORKE.”

Another letter, written by Mr. Charles Yorke to his brother, soon after the preceding, after referring to a visit which had been lately paid him at Cambridge by his father's old friend, Mr. Philip Ward, and to one by Mr. (afterwards Bishop) Warburton, contains the following very interesting account of a distinguished contemporary of Lord Chancellor Hardwicke.

“ Mr. Warburton has lately been near a fortnight with Mr. Pope at Twickenham. He speaks of him in strains of rapturous commendation. He says that he is not a better poet than a man, and that his vivacity and wit is not more conspicuous than his humanity and affability. He tells me that Mr. Pope is tired with imitating Horace; that he thinks he could make something of the *Damaspus*, and intends to do it, but that the great scheme which he has in view is the continuation of the *Essay*.\* The first, you know, was only a general map of man, wherein the extent and limits of his faculties were marked out. The second is to treat of false science at large, and the third is to inquire into the use and abuse

\* *Essay on Man.*

of civil society. In a conversation which he held with Mr. Pope, one evening in his garden, the latter began to open himself unreservedly to the former, on the praises which the world had bestow'd upon him, and his own excellencies. He declar'd, with great sincerity, that he really thought he had been exceeded in every part of writing, and on the side of invention more peculiarly. Mr. Warburton told him, that he would not offend his modesty by entering into a particular designation of his merit, yet he would take the liberty to mention one thing, in which he thought Mr. Pope was unrivalled and alone, and it was that he is the only poet who hath found out the art of uniting wit to sublimity ; your wit, says he, gives a splendour and delicacy to your sublimity, and your sublimity gives a grace and dignity to your wit. They both agreed in condemning Bishop Atterbury's judgment on the Arabian tales ; and upon my observing to Mr. Warburton that they were very unequal, several of them being finely imagined, and conveying an exquisite sentiment of morality, while others were mean in the device, conducted with flatness and a want of spirit, with nothing remarkably instructive in the conclusions to be drawn from them,—he satisfied me with this ingenious reason for it, which is built on an hypothesis of his own. You know, says he, they were translated by a Frenchman from an original Arabic MS. in the K. of France's library ; but there is not above one tenth of the orig<sup>l</sup> translated. The Arabic collector appears to have been a man of little taste, for in order to give a due connection to the whole, he has laid the scene of his narrative in the most flourishing state of that empire for arts, learning, power, and has at the same time introduced into it fables concerning things which happened above a thousand years after, just as if one sho<sup>d</sup>

suppose a story to be told in the reign of W. the Conqueror, which related to George the 1st. Now, continued he, the noblest fables in the collection fall in naturally with the scene which he has laid, so that they are transcribed from the works of some famous author in those days; and the rest, which you speak of as poor and trifling, are taken from some later fabulists, who had neither invention to contrive, nor thought enough to give a sense and meaning to their stories. He added, that from the Arabian tales you might gather the completest notion of the Eastern ceremonies and manners.

“ Mr. Pope communicated to Mr. Warburton Lord Bolingbroke’s rules for the reading of history, which he thinks a very fine performance. That treatise, and the account of his own times, are to be published after his death. In short, Mr. Warburton declares he never spent a fortnight so agreeably anywhere as at Twickenham. He was presented to all Mr. Pope’s friends, who entertained him with singular civility, and received him with an engaging freedom. For my own part, I was much delighted with the opportunities which I had for three or four days of conversing with him. He is really a most extraordinary man, and surprizingly communicative. His memory is prodigious, and his fancy is enchanting. His diligence is equal to the vivacity of his parts, and the fluency and correctness of his conversation is beyond most men. I regard him, however, as a genius of so high a rank, that, unable to contain himself within the narrow limits of ordinary capacities, he *‘spurns the dull earth, and soars above the skies;’* or, to use an expression of his own concerning Mr. Bayle, *‘strikes frequently into the province of paradox.’*”\*

\* Hardwicke MSS., Wimpole.

In a postscript to this letter Mr. C. Yorke says to his brother:—

“ I hear Mr. Harris is metamorphos'd into a beau. I believe you are very little altered by marriage, for you fold up a letter not a whit better than you used to do.”

The next letter is from Mr. Aylmer, Mr. Charles Yorke's college tutor at Cambridge, to Lord Chancellor Hardwicke, giving an account of his son's conduct and progress in his studies; and which the celebrity and eminence which was eventually attained by this young man, render one of peculiar interest.

“ MY LORD,\*—As Mr. Charles Yorke is going to London to morrow, I cou<sup>d</sup> not forbear doing myself y<sup>e</sup> honour of acquainting y<sup>or</sup> Lordship with y<sup>e</sup> satisfaction I take in y<sup>e</sup> regularity of his behaviour, & his very commendable attention to his studies.

“ Mr. Yorke came hither with a very good foundation of school learning, & as much strength of parts & manly judgment as I have ever observed in any young gentleman of his age. He has hitherto showed no disposition to idleness, trifling, or ill company; & if he continues in y<sup>e</sup> same prudent conduct, there is no science or profession of life, proper for a young gentleman of his rank, in which he will not make a very considerable, or rather a very eminent figure.

“ Thus much I can with great pleasure & confidence predict; & I hope your Lordship will with much greater pleasure & satisfaction see it fulfilled in his future life & fortunes. But I beg leave humbly to assure your Lordship, that in giving this account, I have been much more influenced by truth & strict justice, y<sup>n</sup> by any desire of

gratifying a kind parent, & that I shou<sup>d</sup> not have said a tittle less of Mr. Cha<sup>s</sup>. Yorke, where it was proper to mention him at all, to the most indifferent person in the world. I am, my Lord, in all duty & esteem, yo<sup>r</sup> Lordship's most

“ Obedient, humble servant,

“ FRAN. AYLMEY.

“ *Camb., July 23, 1740.*”

No comment is needed on the two very characteristic notes from the celebrated Duchess of Marlborough to Lady Hardwicke, which are here presented to the reader.

“ *Marlborough House, July y<sup>e</sup> 18<sup>th</sup>, 1740.\**

“ MADAM,—As you have been so good as to do me the favour of coming to see me, I shou<sup>d</sup> be glad if you wou<sup>d</sup> give me leave to wait upon you any evening that is most convenient to your Ladiship, before you go out of town. All days will be alike to me. It will be so long, I reckon, before you settle in London after Michaelmas, that I am desirous to take my leave of you once, which 'tis not improbable may be the last. The enclosed verses I send you, thinking they may make you laugh. They were made by an old soldier, who was aid-de-camp to the Duke of Marlboro', & having had no employment for sever<sup>l</sup> years, he has turn'd poet, & has sent me these verses upon my saying I did not love fine musick, and thought nothing so pretty as ballads. This goes to the tune of, 'To your fair ladys, &c.' I am with the greatest inclination & value imaginable,

“ Madam,

“ Your Ladiship's

“ Most obliged & most humble Servant,

“ S. MARLBOROUGH.”

\* Hardwicke MSS., Wimpole.

*“Marlborough House, July 22, 1740.\**

“MADAM,—I give you many thanks for your most agreeable letter, & hope you will oblige me yet further : which is to name the time that will be most convenient to you for me to wait on you at Powis House. And, as I am to see you but once before you go out of town, you need not do it now ; but when you happen to have most time, all days & hours being alike to me after six in the evening, my law affairs being pretty near over. I am now employing myself to make beds for the Duchess of Manchester’s new house, & I think myself the best upholsterer in England. You may do what you please with the old soldier’s verses ; for I have got them by heart, & after my fashion can sing the ballad. Don’t trouble yourself to give any answer to this, but only let me have your commands any morning that you find yourself at liberty for me to attend you in the evening, who am very sincerely,

“Madam,

“Your Ladiship’s

“Most obliged & most humble Servant,

“S. MARLBOROUGH.”

The character of the discussions and dissensions, which sometimes took place at the Board of Regency, is well exemplified by a letter which the Duke of Newcastle wrote to Lord Chancellor Hardwicke, in the commencement of October. Reference has already been made to the frequent outbreaks that occurred between the Duke and Sir Robert Walpole, and to the good offices of Lord Hardwicke, as a mediator between them. A picture of Walpole in council is here presented. The King was at this time at Hanover, whither he had gone

\* Hardwicke MSS., Wimpole.

in May, on which occasion Lord Chancellor Hardwicke was again appointed one of the lords justices for carrying on the government :—

“ *Newcastle House,*

“ *Octr. 1st, 1740.*”\*

“ MY DEAR LORD,—Tho’ I always feel your absence, I scarce ever was so sensible of it as yesterday at the Regency. An accident has happened to the *Grafton*, a clean sheathed 70 g. ship, which disables her from going to the West Indies, but may soon be repaired for home service. Sir Ch. Wager proposed to send the Salisbury, a 50 g. ship, in the room. Sir Robert Walpole upon that pceevishly, & with an air of discontent, said, What! may not one poor ship be left at home? must every accident be repaired for y<sup>e</sup> West Indies, & none be consid<sup>d</sup> that relates to what will be left here? I replied shortly, that I thought there was no reason to lessen the number of S<sup>r</sup> Ch. Ogle’s squadron. Upon which Sir R. Walpole made a formal speech of 20 minutes, with much emotion, to the following effect. . . . That he thought we ought always to alter our measures according to those of our enemies. . . . That *he* opposed nothing, gave in to every thing, was said to do every thing, was to answer to every thing, & yet, God knows, *I dare not do what I think right*. I am in opinion for leaving four more of S<sup>r</sup> Ch. Ogle’s squadron behind, supporting his opinion in the strongest manner, but always concluding, *I dare not, I will not* have any alteration. In this reasoning he was seconded by my Lord Privy Seal, with a short adherence to every thing S<sup>r</sup> R. said. The Archbishop was for reconsidering it another day. S<sup>r</sup> Robert would not suffer it, *Let them all go*, &c. . . .

\* Hardwicke MSS., Wimpole.

“ Sir R. often replied. Did not keep his temper. Would not suffer any diminution of y<sup>e</sup> number, & that he declared as strongly as possible ag<sup>st</sup> the measure, entering *his protest* against what he himself proposed, advised, & now would not, *dared not* alter, and so the Regency broke up.

“ I have been too long already on this subject. I have related the fact, & shall only observe upon it, What circumstances is this kingdom in? What condition are we of the council in? when the first minister shall arraign all y<sup>e</sup> measures, & declare he will not, he dare not, have them altered; & that declaration made, not to private friends, but unnecessarily, uncalled for, at a public meeting of the Regents of the kingdom, who are not to advise the King, but have the executive power lodged by His Majesty in them.

\* \* \* \* \*

“ You will see by Lord Harrington’s letter that the King sets out next Monday or Tuesday, & if the wind is fair, may be here the end of next week. . . . I don’t wish or desire you sho<sup>d</sup> stir from Wimpole sooner than you intended.

“ I am ever most unalterably yours,

“ HOLLES NEWCASTLE.”

His Majesty returned to England about the middle of October. The Duke of Newcastle, in a letter to Lord Hardwicke, dated the 25th of this month,\* gives a sketch of an interview with the King.

“ I was last Thursday alone with the King a great while. I made a report of what passed the night before at our meeting, found His Majesty for the first time just as I could wish, and extremely pleased with the manner

\* Hardwicke MSS., Wimpole.

we proposed to write to Vienna. . . . He talked upon the difference of opinion about y<sup>e</sup> *Kent & Salisbury*; & I had his orders, upon hearing then that the fleet had not saild, to send an express to S<sup>r</sup> Chaloner Ogle, to know y<sup>e</sup> reasons of her not sailing."

In another part of the same letter, His Majesty's sentiments on the subject of the opposition strength, and the cabinet dissensions, are set forth, as detailed by him in the course of this conversation; and which the Duke of Newcastle suspects had been adroitly suggested to the royal mind by Sir Robert Walpole.

"His Majesty afterwards, in a formal sett. speech or declaration, but not in ill humour, said to my Lord Harrington & I, 'As to the business in Parliament, I don't value the opposition, if all those in my service act together, & are united; but if they thwart one another, & create dissensions in the carrying on the publick business, then indeed,' or to that purpose, 'it would be another case.'

"I easily saw from whom this came: (Sir R. had been in the closet near an hour, & came out in high spirits & humear). I answered His Majesty y<sup>t</sup> to be sure all his servants would unite in doing him y<sup>e</sup> best service they could. I found Sir R. in the outward room, & after mentioning to him in the presence of Lord H——n, y<sup>t</sup> y<sup>e</sup> King was quite altered from y<sup>e</sup> day before, as to writing to Vienna, &c., I told them His Majesty had made a pretty extraordinary speech to us, & I then repeated it, saying, 'I have heard this language often before.' He replied, 'I know you mean from me;' & indeed I did, for I can almost swear to the words. 'However,' (says Sir R.) 'agreeable it may be to my own way of thinking, or true in itself,' & then mentioned something, 'I have said

nothing to the King,' (or) 'nothing *now* to that purpose.' (It might have been the day before, when he acquainted the King with our difference in council.) I said then to him, Lord Harrington present, 'When measures are agreed amongst us, it is very right that every body should support them ; but not to have the liberty of giving one's opinion before they are agreed, is very wrong.' He said shortly, 'What do you mean? This war is yours. You have had the conduct of it. I wish you joy of it.' I contented myself with denying this fact, & so we parted. Now, my dear Lord, how can business go on this way? What is agreed amongst us is often equally overhauled afterwards, both by Lord H. & S<sup>r</sup> R. if it is not quite agreeable to their own inclinations. And, when we have reason to fear that our united credit with the King may hardly be sufficient to induce His Majesty to do quite right, in this great conjuncture, *one* will govern all, & fill the King's head with complaints & unreasonable jealousies of part of his servants. I don't think I was *the single* man meant.

"I hope you will reflect on this, & say to *me*, & to *others* what you think we sho<sup>d</sup> do. I will, I promise you, comply with what you advise."

An application was shortly before this time made to the Lord Chancellor by a very venerable sage of the law, to obtain His Majesty's leave for him to retire from the bench. The letter is couched in somewhat quaint terms, and displays much of the character of the man. Not the least extraordinary part of the epistle was the grave proposal of this decrepid veteran which he actually made, to obtain a seat in the House of Commons, after his infirmities had caused his retirement from the judicial seat.

The writer was the Hon. Mr. Justice Fortescue Aland,

one of the judges of the Court of King's Bench. He commenced thus :—

“ MY VERY GOOD LORD,\*—I beg leave to renew my late address to yo<sup>r</sup> L'd'p. for rest & peace. The application is proper, & I do it with great pleasure, since yo<sup>r</sup> L'd'p's extreme goodness, & uncommon candour, have made yo<sup>r</sup> L'p the great asylum of all judges.”

Lord Chancellor Hardwicke in his reply to the venerable judge, stated as follows :—

“ Tho' I sho<sup>d</sup> be very sorry that the King & the public sho<sup>d</sup> lose the advantage of your further service, yet my regard for you & my sincere desire to do every thing that may contribute to your ease & satisfaction, will engage me zealously to forward, as far as I can, what you with so much earnestness desire. . . . I shall not fail to take the first opportunity, which y<sup>e</sup> great affairs that are immediately to be dispatched on the King's return, will admit, to lay y<sup>r</sup> request in y<sup>e</sup> best manner I am capable of doing it, before His Majesty.”†

Sir Robert Walpole was in many respects very unscrupulous about the means by which he attained any end he had in view, especially as regarded the extension of his influence over an individual, or a body of men whom he desired to render subservient to his purposes. Even the judicial administration of the country did not escape some attempts of this kind being made ; as appears by the following letter from Lord Chancellor Hardwicke to Sir Robert Walpole on the subject of a judgeship then vacant in which the Chancellor urges fully and zealously the propriety of at once filling the vacant place, and pleads in a most constitutional manner against

\* Hardwicke MSS., Wimpole.

† Ibid.

the adoption of any measures which might be construed into tampering with the justice of the country.

*“ Powis House, Jan. 13, 1741.\**

“ SIR,—I was at your door in expectation of y<sup>e</sup> meeting, which was appointed on Monday for this night. Tho’ that did not hold, I would (if you had not been engaged) have made use of the opportunity of speaking to you further on the subject of the vacant judge. The more I consider y<sup>t</sup> affair y<sup>e</sup> more uneasy I am at the situation in w<sup>ch</sup> it will immediately be, if a diff<sup>t</sup> resolution be not taken ; & I cannot but hope that the reasons y<sup>t</sup> I laid before you in our last conversation, will, upon reflection appear to yourself to have more weight than you were willing to allow them. It is my firm persuasion y<sup>t</sup> y<sup>e</sup> keeping this place open will be so far from having any good effect, that it will be productive of many ill ones, & may at last create what may be looked upon as a necessity of throwing it into such hands, as neither you nor I sho<sup>d</sup> wish it to fall into. The term begins on Saturday se’ennight (y<sup>e</sup> 23<sup>d</sup>), & ends on y<sup>e</sup> 12<sup>th</sup> of Feb<sup>r</sup>. The making any person a serjeant takes up many days, & can only be done in term time, so that if y<sup>e</sup> promotion be not then completed it cannot be before y<sup>e</sup> circuits. The expedient you were pleased to propose was, y<sup>t</sup> a serjeant sho<sup>d</sup> supply y<sup>e</sup> place. I will not trouble you with what I then said of y<sup>e</sup> impropriety of such a proceeding in general, when a judge’s place has been vacant for a considerable time. But an additional consideration occurs upon this head. My Lord Chief Baron’s health has lately taken such a turn, y<sup>t</sup> he is likely to continue for some time, & yet is entirely unfit for business, so y<sup>t</sup> a serjeant must go in his room. Mr. Justice Fortescue

\* Hardwicke MSS., Wimpole.

Aland is absolutely unable to go a circuit, and on y<sup>t</sup> account a serjeant was appointed to officiate for him, even in y<sup>e</sup> summer season. And, if another serjeant shall also be sent, three serjeants will be to go the next circuit instead of y<sup>e</sup> regular judges, & one of y<sup>m</sup> in y<sup>e</sup> vacant place of a judge, which ought to have been filled up. I verily believe that no instance of this kind was ever known, & sho<sup>d</sup> be extremely sorry to see one happen. I know y<sup>r</sup> thoughts are much taken up with greater considerations, & yet, as this is a point which concerns the administration of justice, & the reputation of y<sup>e</sup> government in y<sup>t</sup> respect, it is of no small importance. Many corporation causes are now depending, several of which will probably come to be tried on the next circuits ; & if three serjeants, who are generally understood (when employed on such occasions) to be candidates for judge's places, sho<sup>d</sup> be sent, it wou<sup>d</sup> be liable to misconstruction. I begg you would afford a few moments to think of this affair. It makes me uneasy to give you this interruption, & yet I cannot help it, because I can never give my consent to a step which appears to me to be so highly improper.

“ I am, &c.

“ HARDWICKE.”

The session of Parliament was opened on the 10th of November, 1740, by a speech from the throne, the draft of which, and also of the address of the Lords in answer to it, are entirely in the handwriting of Lord Chancellor Hardwicke. The King assured them on this occasion that he was determined to prosecute the war vigorously, even though France should espouse the cause of Spain. He therefore recommended to their consideration the necessary supplies for putting the

nation in such a posture that it should have nothing to fear from any emergency.

On the 18th of November, a warm debate took place in the House of Lords on the address of thanks, one in opposition to that intended by the government having been proposed by the Duke of Argyle, who, Mr. Orlebar says, “got possession of the House by starting up before the speech was well ended in the reading to the House, after the King was gone.” The topics adverted to were principally foreign affairs, and the war in progress. Lord Chancellor Hardwicke addressed the House in support of the ministerial motion; but his speech contains nothing of present interest, or of intrinsic value at this period. He dwelt on the importance of unanimity among ourselves, to promote our influence among foreign nations, and to preserve the balance of power in Europe, and defended generally the conduct and policy pursued by the government. The Duke of Argyle’s proposal was negatived.

On the 1st of December, an animated discussion occurred in the House of Lords on a motion by Lord Bathurst, for an address that the House might have laid before them Vice-Admiral Vernon’s instructions from the time of his sailing to the 24th of June last, except such as might relate to any design yet to be executed.

The ministry objected strongly to this proposal, and Lord Chancellor Hardwicke spoke against the motion. Bishop Secker states, in a note to his report of this debate, “The Chancellor assured me, from his knowledge of the instructions, that there were things which, if published, would have given advantages to our enemies abroad.” This was the ground of objection urged by Lord Hardwicke against the motion, which on a division was negatived by 57 to 35.

On the 8th of December a motion was made by Lord Sandwich, for laying before the House Admiral Haddock's instructions. This also was resisted by the ministry. Lord Chancellor Hardwicke spoke against it. In the report of his speech by Bishop Secker are to be found the following observations on the admission of strangers to hear the debates, but which would not be very palatable to the public in our day.

“Another thing doth diminish the dignity of the House ; admitting all kinds of auditors to your debates. This makes them be what they ought not to be, and gives occasion to saying things which else would not be said. Part of the clerk's oath is to keep secret what passes in the house ; and the House admits every body. It is hoped lords will consider this. This is the freest government in the world, and I hope it will continue so. But liberty should not be used merely for the sake of using it, nor so as to disable the government from defending itself.”\*

Lord Sandwich's motion was rejected by 58 to 41.

On the 9th of December, a debate of great interest and importance took place in the House of Lords, on a motion of the Duke of Argyle for a resolution, “that augmenting the army by raising of regiments, as it is the most unnecessary and expensive method, is also the most dangerous to the liberties of Great Britain.”

Lord Chancellor Hardwicke, with the other members of the government, opposed the motion, and in the course of his speech delivered the following sound and constitutional sentiments, generally applicable to the bearing of the question before them, and, as such, valuable in all times alike. He began by modestly avowing his own ignorance of military affairs, and expressed himself as only calculated to deal with the prin-

\* Hansard's Parl. Hist.

ciple of the topic under consideration. But as persons well informed differed, he contended that all were free to form an opinion on the matter. The apt comparisons which he made, and the philosophical sentiments and statesman-like views expressed by him, are deserving of deep attention, as is also his comprehensive mode of dealing with a great constitutional subject. His application of his historical knowledge to the times present, is also very remarkable. And the real principle of the danger and unconstitutional nature of a standing army in time of peace, is here admirably explained and defined.

*“ Lord Chancellor Hardwicke. My lords, I am far from suspecting that an open profession of my inability to examine the question before us, in its full extent, will be imputed to an affectation of modesty, since any knowledge of military affairs could not be acquired in those stations in which I have been placed, or by those studies in which the greatest part of my life is known to have been spent. It will not be expected, my lords, that I should attempt a formal confutation of the noble Duke’s positions, or that I should be able to defend my own opinion against his knowledge and experience ; nor would I, my lords, expose myself to the censure of having harangued upon war in the presence of Hannibal.*

*“To me, my lords, the establishment of our armies, comprising different views and connecting various subordinate regulations, may be compared to a medicine composed of different ingredients, and found infallibly efficacious in a dangerous disease, in which, though some of the parts may seem to physicians of the profoundest learning superfluous or improper, it would be no less than the folly of preferring experiments to life, to make any alteration.*

*“The wantonness of innovation, my lords, is a dangerous disease of the mind ; in a private station it prompts men to be always discontented with what they find, and to lose the enjoyment of good in search of something better ; it incites them to leave the safe and beaten tracks of life in search of those which they imagine nearer, but which are at best less secure and which generally lead them to points far different from that to which they originally intended to direct their course.*

*“It is dangerous, my lords, to admit any alteration which is not*

absolutely necessary, for one innovation makes way for another. The parts of a constitution, like a complicated machine, are fitted to each other, nor can one be changed without changing that which corresponds to it. This necessity is not always foreseen, but when discovered by experience is generally complied with ; for every man is more inclined to hazard further changes, than to confess himself mistaken by retracting his scheme. Thus, my lords, one change introduces another, till the original constitution is entirely destroyed.

“ By the ambition of innovation, my lords, have almost all those confines been destroyed, of which nothing now is left but the memory. Every human establishment has its advantages and its inconveniences, and by weak attempts to remedy these defects, which, notwithstanding the utmost attention, will embarrass the machine of government, alterations have been introduced which have been quickly followed by a total dissolution.

“ The chief reason, my lords, of the danger arising from a standing army may be ascribed to the circumstances by which men subject to military laws are distinguished from other members of the same community. They are, by the nature of martial government, exposed to punishments which other men never incur, and tried by forms of a different and more rigorous kind than those which are practised by the civil power. They are, if not exempted from the jurisdiction of the magistrate, yet subject to another authority, which they see more frequently and more severely exerted, and which, therefore, they fear and reverence in a higher degree. They, by entering into the army, lay aside, for the most part, all prospect of advantage from commerce or civil employments, and in a few years neither fear nor hope anything but from the favour or displeasure of their own officers. For these, my lords, or for other reasons, the soldiers have always been inclined to consider themselves as a body distinct from the rest of the community, and independent on it. A government regulated by their own laws, without regard to the general constitution of their country, they have therefore been ready to subvert the constitution, from which they received little advantage, and to oppress the civil magistrates, for whom they had lost their reverence.

“ And how soon, my lords, might such outrages be expected from an army formed after the model of the noble Duke, released from the common obligations of society, disunited from the bulk of the nation, directed solely by their own officers, and ultimately commanded by a man who had the right of commanding no other ? Would they not soon consider themselves as a separate community, whose interests were, no

less than their laws, peculiar to themselves? Would they not consider him from whom they received all their rewards and all their punishments as the proper object of their supreme regard, and endeavour to exalt him to the same dominion over others which he enjoyed in regard to themselves, that they might share in his superiority?"\*

Lord Carteret replied to Lord Chancellor Hardwicke, and commenced as follows:—

"My lords,—The known abilities of that noble lord incline me always to hear him with uncommon expectation and attention, which seldom fail to be rewarded by such pleasure and information as few other men are able to afford. But his observations on the question before us, my lords, have only convinced me that the greatest abilities may be sometimes betrayed into errors, and the most candid dispositions be vitiated by accidental prejudices. For his own arguments neither appear just, nor his representation impartial of those advanced in favour of the motion."†

On the 3rd of February, 1741, as appears by the notes and memoranda in Lord Hardwicke's handwriting, there was a debate in the House of Lords on a "question for an address relating to the augmentation [of the forces], & method of making it." Lord Chesterfield was the mover of the address, and his proposal was negatived, the contents being 49, the not contents 67. The Duke of Argyle was one of the principal supporters of the motion, and the Bishop of Salisbury, Dr. Sherlock, spoke against it. The Lord Chancellor himself took part in the debate, of which a very logical analysis was made by him during its progress. No separate notes, however, of what he said on this occasion are in his handwriting, with the exception of his observations, placed opposite to his memoranda of what was urged by the adverse speakers, of what might be stated in reply to them.

Sir Robert Walpole was at this time becoming ex-

\* Hansard's Parl. Hist.

† Ibid.

tremely unpopular in the country. Complaints of the amount of taxation under which the people were labouring were very general, and there appeared to be every prospect of an increase of these burdens. Dissatisfaction was also expressed that no effectual attempts had as yet been made to annoy the enemy. Expensive squadrons had been equipped, and had made excursions, but had returned without striking a blow. The Spanish fleet had sailed first from Cadiz, and then from Ferrol, without any interruption from Admiral Haddock, who commanded the British squadron in the Mediterranean, and who was supposed to be restricted by the instructions he had received from the ministry, though, in fact, his want of success was owing to accident. Admiral Vernon had written from the West Indies to his private friends that he was neglected, and in danger of being sacrificed. Notwithstanding the numerous navy which the British nation maintained, the Spanish privateers made prizes of the British merchant ships with impunity. In violation of an express treaty, the French King had repaired the harbour and fortifications of Dunkirk. The French fleet had sailed to the West Indies, in conjunction with that of Spain. Alarms were entertained in England for the safety of Jamaica. The practice of impressing sailors, and the embargo which had been laid on ships in all the ports of Great Britain and Ireland, had proved very injurious to commerce. All these different circumstances, the bad effects of which were much exaggerated and dwelt upon by the enemies of the minister, excited the greatest discontent throughout the nation, and caused an outcry against him to be raised, and determined measures for his overthrow appeared to be now in preparation.

During the last session, the opposition had used every

effort to increase the unpopularity of Sir R. Walpole, and to harass him by motions and questions relative to the production of papers and letters, and to the prosecution of the war, which might tend either to criminate him if granted, or if denied to throw an odium on his mysteriousness and uncandid reserve. We have already seen to what extent this was done in the House of Lords. The friends of Walpole complained, and not without reason, of the feeble resistance which was made to these attacks by some members of the government. Lord Chancellor Hardwicke, however, cannot be accused of having been at all backward in defending the minister on these trying occasions, although the duties of his office did not at all call for his active interposition on questions of this nature.

Mr. Sandys, early in the session, went up to Sir R. Walpole in the House of Commons, and told him that on the Friday following he should bring a charge against him in public. The minister seemed to be surprised at this unexpected intimation, but, after a short pause, thanked him politely for this previous notice, and said he desired no favour, but fair play. However, on this occasion he was convicted, not of perpetrating treason, but of misquoting Horace. "As I am not conscious of any crime," said he, "I do not doubt of being able to make a proper defence: *Nil conscire sibi, nulli pallescere culpæ.*" He was corrected by Mr. Pulteney, but insisted on his being in the right; and actually laid a wager of a guinea on the justness of his quotation, which he lost on referring the matter to a person agreed upon to decide the point. Pulteney, on receiving the money from Walpole, held it up to the House, and exclaimed that "it was the only public money he had received for many years, and it should be the last."

Mr. Sandys, on the day appointed, after enumerating

the different grounds of complaint against Sir R. Walpole, and the particulars of his alleged misconduct with regard to measures both foreign and domestic, and charging him with gross corruption, concluded with moving for an address to the King to remove Sir Robert Walpole from his presence and councils for ever.

Mr. Pelham replied to Mr. Sandys, and Sir John Barnard answered the former. Sir Robert Walpole spoke with great temperance and deliberation. He challenged his opponents to produce one instance of alleged bribery or corruption, either in or out of the House. The debate was protracted until three o'clock in the morning, when the motion was rejected by a considerable majority.

A letter to Lord Chancellor Hardwicke from the Attorney-General, Sir Dudley Ryder, states of the debate in the House of Commons, that

“The question passed in y<sup>e</sup> negative by 290 ags<sup>t</sup> 106. L<sup>d</sup> Cornbury, Mr. Southwell, Mr. Harley, & Mr. Bows, all spoke ags<sup>t</sup> the question; & all of them but Mr. Harley voted with us; & he, with his brother went away before y<sup>e</sup> question was put. Your Lordship must see by the numbers that many more went away likewise.

“We had no question of approbation, which was much desired by many of our friends, & mentioned by some of them as intended, but declined by Sir Robert. I did not gett home till 4. We had y<sup>e</sup> good fortune to gett a division by y<sup>e</sup> zeal of Mr. Littleton ags<sup>t</sup> the sense of his friends, & after an aye that could not be at first heard.”\*

A similar attack on the minister was made on the same day in the House of Lords by Lord Carteret. The terms of it were, “That an humble address be presented to His Majesty, most humbly to advise and beseech His Majesty that he will be most graciously pleased to re-

\* Hardwicke MSS., Wimpole.

move the Right Hon. Sir Robert Walpole, Knight of the most Hon. Order of the Garter, first Commissioner of His Majesty's Treasury, and Chancellor of the Exchequer, and one of His Majesty's most Hon. Privy Council, from His Majesty's presence and councils for ever."

Lord Carteret, in a speech which, Smollett says, would not have disgraced a Cicero, commenced by declaring that the honour of the nation was at stake, and that the oldest man had not known such circumstances as they were then placed in. He then proceeded to take a review of foreign affairs. He condemned the treaty of Utrecht, as making France too strong and Germany too weak; and went on to remark on the general foreign policy of Walpole. The domestic affairs of the nation were also in the same manner brought under notice. And he concluded by contending that the course he was pursuing was strictly parliamentary, constitutional, and just.

Lord Abingdon, who seconded the motion, rose next, and laid it down as a principle that common fame might be a ground for impeachment, though he would not condemn a man upon it. The people were seldom generally wrongly prejudiced, nor was an innocent minister likely to be overwhelmed with infamy.

The Duke of Newcastle spoke strongly against the motion, as one that never was countenanced except in troublous or factious times, and declared that general charges and accusations, without fixing any particular crime, or offering any legal evidence, had proved fatal to the King himself. He objected to inquiring into measures transacted many years ago, and judging them by their result in after years, which no one at the time could have foretold. The alliance with France he de-

clared to have been necessary for our protection against Spain. The balance of power in Europe was still preserved. He concluded with defending the former negotiation with Spain.

The Duke of Argyle next addressed the House. Smollett, whose zeal for his own party seems to have rendered him utterly blind to the merits of any of his opponents, the coldest praise of whom he never affords, except when they chance on some occasion to come over to his side of the question, observes of this nobleman, that he, with "Lord Bathurst, and his other colleagues, seemed to be animated with uncommon fervour, and even inspired by the subject. A man of imagination, in reading their speeches, will think himself transported into the Roman Senate before the ruin of that republic." His Grace proceeded to assert that the times were troublesome and factious, when the whole power of the state was monopolized by a weak and factious minister, as in the present case. He contended that an address to remove a minister might be sufficiently founded on general rumours, and general disgust ; and ought in many cases to be agreed to without any particular accusation, and consequently without any proof. A minister's character could not be affected by such an address, but the opportunity of clearing it would be afforded. His reputation was already lost with many ; and he was generally suspected of enslaving the Sovereign, destroying the independence of Parliament, and corrupting the nation ; of sacrificing his country, and befriending France. He was accused also of carrying on, in a very inefficient manner, the war with Spain. From all these accusations he ought to have the opportunity of clearing himself. His misconduct did not altogether proceed from weakness. He was aware that he was generally hated by his countrymen, and that the favour of the

Sovereign alone protected him against their resentment, and he was perhaps courting an asylum among their enemies. The refusal of this motion would be ill received by the people; and its tendency fatal to Europe, and ruinous to this country.

Lord Chancellor Hardwicke rose next after the Duke of Argyle. His speech on this occasion,—from which select extracts only are here made,—is one of the finest specimens, in point of style, matter, and reasoning, that we have of Lord Hardwicke's oratorical efforts. His manner is calm and dignified. He is sufficiently firm and argumentative for a defender of the minister on this emergency, and yet he never descends to the pleading of a mere partisan. His reasoning is at once logical, statesmanlike, and profound. He takes a comprehensive view of the subject, and yet he approaches near enough to the immediate topic before the House.

This address, which is both temperate in its tone, and decisive in the principles advocated, seems to lose nothing by either of these qualities. The appeals to history are forcibly made, and felicitously chosen. And through the entire argument there runs an undercurrent of light, though well pointed sarcasm, which occasionally bursts forth, and displays itself to view. As a whole, this speech serves particularly well to develop Lord Hardwicke's peculiar powers as an orator, and his mode of dealing with a great constitutional subject. The manner in which he reasons from first principles on each point, whether in inquiring into the causes of dissatisfaction in a state, or of political contests, and which render the speech applicable to all times alike, deserves especially to be noted; and many topics are handled in a deeply philosophical manner, and evince a mind well suited for scientific analysis and discussion. Each portion is full

of thought. The similies are happily chosen. The information evinced is comprehensive and accurate ; and, above all, the knowledge of human nature, both as regards man as an individual, and men united into bodies, is shown to be very deep ; and sound sense ever distinguishes the whole. The appeal to the highest judicial assembly of the land, by the first of its judicial officers, is very fine. And the mode in which, at the termination of his speech, the orator contrives to bring to a focus all the strong points of his argument, is not the least remarkable feature in the address before us.

*“ Lord Chancellor Hardwicke. My lords, in all contests of a political nature, we ought to distinguish between those that proceed merely from a difference in opinion with regard to the public good, and those which proceed from private views, and personal animosities. In every country where men have leave to express their sentiments freely, there will be contests about every public measure that can be proposed or pursued ; because, when there is no demonstration neither on one side nor the other, which is the case in all political disputes, there will be a difference of opinion. Even in the most arbitrary countries there must be a difference of opinion ; but that difference cannot appear, or occasion any contest, because those who happen to disapprove of the public measures dare not express, much less publish, the reasons for their disapprobation. Therefore, in every country where a free government is established, every time must be a time of political altercation, but those times only are to be called troublesome and factious, when the political contests proceed from private views, and personal animosities ; and if by this rule we examine the times when such addresses as this now under our consideration have been agreed to by either House of Parliament, I believe we shall find cause to conclude, that most of them were troublesome and factious times, and that those troubles and factions did not so often arise from the extraordinary weakness or wickedness of the ministers, as from the private views, and personal animosities of those that opposed them.*

*“ Ministers, my lords, are not infallible no more than other men ; and they are liable to the same passions and affections with the rest of their species. As every man in the world would, I believe, desire to have the affection and esteem of his countrymen, rather than their*

hatred and contempt, therefore, both in charity, and from the nature of mankind, we ought to suppose that ministers do the best they can for the public good ; but, as they are human, they must be guilty of oversights, mistakes, and failings, which will be overlooked by every good subject ; and when not very extraordinary, will be forgiven by every man that is not their personal enemy, nor possessed with an immoderate ambition of succeeding them in their places.

“ In this, as well as in all other countries, my lords, the people expect to be protected in their legal rights, and the free enjoyment of their properties ; they expect to have justice, diligently, faithfully, and impartially administered at home, and to be preserved from invasions, inroads, and piracies from abroad. This they expect from their ministers and governors, but they have very ill will to contribute either the trouble or the expense that is necessary for procuring them this protection, and for this reason they are, in all countries, extremely apt to find fault with, and clamour against, the conduct of their governors, which makes it but too easy to raise a general complaint against the conduct of the best sort of governors ; and no governor or minister can ever want personal enemies, who will be ready upon all occasions to criticise his conduct, to magnify, and set in the most glaring light the little failings he may be guilty of, and to propagate murmurings, and discontents, among the people.

“ All men in superior stations are, we know, exposed to the envy of those below them, and every man that is governed by this malevolent passion must of course become the professed, or the secret enemy, of a minister. Others, again, are entirely governed by their ambition, and are very apt to become enemies to a minister, because they suppose him to have been the cause of their not meeting with success in some unreasonable suit they made to their Sovereign. But, of all the sources of discontent, and personal enmity against a minister, the greatest is that which in this debate has been supposed to be his chief support ; I mean, my lords, the disposal of posts and offices in our government ; for there are always five or six, sometimes a dozen of candidates, for almost every post or place any minister can have in his disposal ; of these, but one can have it ; and if the disappointed candidates are not men of great moderation, they of course become personal enemies to the minister, and are diligent in propagating every popular cry against him.

“ Thus, your lordships may see that no minister can ever be without a multitude of personal enemies, who upon all occasions will be ready to propagate what the people are too apt to believe, that their business has been ill conducted, or that they have been put to a much

greater expence than was necessary ; for, in this case, ministers, or magistrates, may be very properly compared to attorneys or solicitors in law affairs. Whilst the law suit goes on, and the attorney brings in no bill of fees, and disbursements, the client is perfectly satisfied with his conduct ; but if the cause meets with any unexpected delay, or bad success, though it be entirely owing to the nature of the case, the client then begins to exclaim against the conduct of his attorney ; and even when the cause meets with the best success, and is brought to a happy issue, yet the client generally finds fault with his attorney's bill, and seldom pays it without murmuring. The case is, in this country, the same between the people and the King's ministers. If any national affair misgives, or meets with any cross accident, it is always, though often without reason, imputed to the ill conduct of the administration ; and when the sums necessary for the public service come to be provided for, and paid, the people are always apt to complain.

" My lords,—Though I very readily admit that crimes ought to be punished ; that a treacherous administration of public affairs is in a very high degree criminal ; that even ignorance, where it is the consequence of neglect, deserves the severest animadversion ; and that it is the privilege and duty of this House to watch over the state of the nation, and to inform His Majesty of any errors committed by his ministers ; yet I am far from being convinced either of the justice or necessity of the motion now under consideration.

" Let us, my lords, inquire before we determine, and suffer evidence to precede our sentence. The charge, if it is just, must be by its own nature easily proved ; and that no proof is brought may, perhaps, be sufficient to make us suspect that it is not just.

" For, my lords, what is the evidence of common fame, which has been so much exalted, and so confidently produced ? Does not every man see that on such occasions two questions may be asked, of which, perhaps, neither can easily be answered, and which yet must both be resolved before common fame can be admitted as a proof of facts ?

" Is fame, my lords, that fame which cannot err, a report that flies on a sudden through a nation, of which no man can discover the original, a sudden blast of rumour that inflames or intimidates a people, and obtains without authority a general credit ? No man versed in history can inquire whether such reports may not deceive. Is fame rather a settled opinion, prevailing by degrees, and for some time established ? How long, then, my lords, and in what degree, must it have been established to obtain undoubted credit, and when does it commence infallible ? If the people are divided in their opinions, as in

all public questions it has hitherto happened, fame is, I suppose, the voice of the majority, for if the two parties are equal in their numbers fame will be equal ; then how great must be the majority before it can lay claim to this powerful auxiliary, and how shall that majority be numbered ?

“ These questions, my lords, may be thought, perhaps with justice, too ludicrous in this place ; but, in my opinion, they contribute to show the precarious and uncertain nature of the evidence so much confided in.

“ Common fame, my lords, is to every man only what he himself commonly hears ; and it is in the power of any man’s acquaintance to vitiate the evidence which they report, and to stun him with clamours, and terrify him with apprehensions of miseries never felt, and dangers invisible. But, without such a combination, we are to remember that most men associate with those of their own opinions, and that the rank of those that compose this assembly naturally disposes such as are admitted to their company to relate or to invent such reports as may be favourably received ; so that what appears to one lord the general voice of common fame, may by another be thought only the murmur of a petty faction, despicable with regard to their numbers, and detestable if we consider their principles.

“ If the right honourable gentleman has gained more of His Majesty’s confidence and esteem than any other of his servants, he has done only what every man endeavours, and what, therefore, is not to be imputed to him as a crime.

“ It is impossible, my lords, that kings, like other men, should not have particular motions, or inclinations, or dislikes ; it is possible that they may fix their affection upon objects not in the highest degree deserving of their regard, and overlook others that may boast of greater excellencies and more shining merit ; but this is not to be supposed without proof ; and the regard of the King, as of any other man, is one argument of desert more than he can produce who has endeavoured after it without effect.

“ In every government, my lords as in every family, some, either by accident or a natural industry, or a superior capacity, or some other cause, will be engaged in more business and treated with more confidence than others ; but if every man is willing to answer for his conduct of his own province, there is all the security against corruption that can possibly be obtained ; for if every man’s regard to his own safety and reputation will prevent him from betraying his trust or abusing his power, much more will it incite him to prevent any miscon-

duct in another, for which he must himself be accountable. Men are usually sufficiently tenacious of power, and ready to vindicate their separate rights, when nothing but their pride is affected by the usurpation; but surely no man will patiently suffer his province to be invaded, when he may himself be ruined by the conduct of the invader.

"Policy, my lords, is very different from prescience; the utmost that can be attained is probability, and that, for the most part, in a low degree. It is observed that no man is wise but as you take into consideration the weakness of another,—a maxim more eminently true of political wisdom, which consists very often only in discovering designs which could never be known but by the folly or treachery of those to whom they are trusted. If our enemies were wise enough to keep their own secrets, neither our ministers nor our patriots would be able to know or prevent their designs, nor would it be any reproach to their sagacity that they did not know what nobody would tell them.

"If it was always in our power to penetrate into the intentions of our enemies, they must necessarily have the same means of making themselves acquainted with our projects; and yet, when any of them are discovered, we think it just to impute it to the negligence of the minister.

"Thus, my lords, every man is inclined to judge with prejudice and partiality. When we suffer by the prudence of our enemies we charge our ministers with want of vigilance, without considering that very often nothing is necessary to elude the most penetrating sagacity but obstinate silence.

"If we inquire into the transactions of past times, shall we find any man, however renowned for his abilities, not sometimes imposed upon by falsehoods, and sometimes betrayed by his own reasonings into measures destructive of the purposes which he endeavoured to promote? There is no man of whose penetration higher ideas have been justly formed, or who gave more frequent proofs of an uncommon penetration into futurity, than Cromwell; and yet succeeding times have sufficiently discovered the weakness of aggrandizing France by depressing Spain, and we wonder now how so much policy could fall into so gross an error as not rather to suffer power to remain in the distant enemy, than transfer it to another equally divided from us by interest, and far more formidable by the situation of his dominions.

"This motion, therefore, my lords, founded upon no acknowledged, no indisputable facts, nor supported by legal evidence; this motion, which, by appealing to common fame as the ultimate judge of every man's actions, may bring every man's life or fortune into danger; this

motion, which condemns without hearing, and decides without examining, I cannot but reject, and hope your lordships will concur with me.”\*

The Earl of Carlisle replied to the Chancellor, and commenced by saying that the state of the matter to be considered had not, in his opinion, been rightly apprehended by the noble lord who spoke last, nor was the innocence or guilt of the minister the chief question before them, because a minister might possibly mean well, and yet be unqualified for his situation.

Several other peers spoke afterwards, and

Lord Bathurst, referring to Lord Hardwicke, began his speech by observing, “I am surprized to hear it said that most of the addresses of this kind have proceeded from private views, and personal animosities; and it adds greatly to my amazement when I hear such a doctrine advocated by a noble lord, whose candour I have a great opinion of, and whose knowledge in our histories, and in our journals of Parliament is not in the least to be questioned.” He then went on to remark that ministers might not be infallible, but that was very different to a minister being never in the right, and designing to render his power uncontrollable, and to overturn the liberties of his country. If the suspicions were groundless, the whole people of England must be accused of injustice. A man in office, as the noble Lord (Hardwicke) had said, must necessarily make enemies; but not to the extent he supposed, as they would, though disappointed of particular objects, be still retained by expectations of something. Ministers, he agreed, were like attorneys, to whom Lord Hardwicke had compared them, but principally in this, that they generally sacrificed the interest of their client to their own. Some other points in the Lord

\* Hansard's Parl. Hist.

Chancellor's address were also referred to, and attacked by this speaker.

The debate occupied eleven hours ; at length the question was put, and on a division the motion was negatived. Contents, 47 ; proxies, 12 ; in all 59. Not contents, 89 ; proxies, 19 ; in all 108.

The Prince of Wales was present, but did not vote, and it was remarked that several peers who had places under government, particularly the Earl of Wilmington, did not divide with either party.

The protest of the opposition peers against the rejection of the motion was drawn up by Lord Bolingbroke, and was entered on the journals.

At the termination of the debate, a resolution was moved by the Duke of Marlborough, the draught of which is in the handwriting of Lord Chancellor Hardwicke, " that an attempt to inflict any kind of punishment on any person, without allowing him an opportunity to make his defence, or without any proof of any crime or misdemeanour committed by him, is contrary to natural justice, the fundamental laws of this realm, and the ancient established usages of Parliament, and is a high infringement on the liberties of the subject." After a debate of some length, this motion was carried; by 81 to 54, and a protest against it entered by the dissentient peers.

During a debate in the House of Lords, respecting an address to the Crown, for the issue of the Prince of Wales to be prayed for, some confusion was caused by persons standing before the Archbishop of Canterbury, who was about to speak, but was quite hidden by them. Lord Abingdon complained of the indecent behaviour of the public, and at length, with some difficulty, the House was entirely cleared. It was not, therefore,

altogether without reason that Lord Hardwicke desired the exclusion of those unmannerly visitors from the House of Lords.

A discussion of some interest, in a constitutional way, took place in the House of Lords on the 12th of March, which was occasioned by an alteration made by that House in a turnpike bill which had been sent from the Commons. It was contended, that being a money bill the Lords had no right to alter it; or if they had the right, it was one which it was not proper to exercise.

The true constitutional doctrine on the point at issue was lucidly and explicitly laid down by Lord Hardwicke, in a speech, the substance of which was thus reported by Bishop Secker\*—

*“ Lord Chancellor Hardwicke. You have a right to amend plain money bills in the money part. And I hope you will never give it up. But this is not a money bill. In a parliamentary sense they only are such which grant money to the Crown. Money bills are public in their nature. This is the most maintainable point that can be. But be your right never so strong, never make any amendment but when it can be supported by reason, nor do it because you will. Power is vested in each part for the sake of the whole. If the Crown should exert its power for the sake of exerting, that would look ill. Never any single man or body of men get anything by exerting power so.”*

On a division the contents and non contents were equal, but there was a preponderance of proxies on the ministerial side, which was favourable to the power of the Lords to alter a money bill. The following note is by Archbishop Secker : †—

“ N.B. The Speaker of the House of Commons told me that the Poor Bill, 13 Eliz., came from the Lords; but that the Commons had made their present claim ever since the Restoration, and could not

\* Hans. Parl. Hist.

† Ibid.

possibly give it up, though some things had passed since the Restoration, inadvertently, that were contrary to it."

On the 9th of April there was a debate in the House of Lords on an address of thanks for the King's speech, (the draught of which is entirely in the Chancellor's handwriting), and which related mainly to the defence of the Pragmatic Sanction in the most effectual manner, and securing the King's German dominions. The motion for an address to the throne, which implied a concurrence in these views, and the passing a vote of credit for this purpose, was warmly opposed by several peers, on the ground that the legal power of the Crown was already sufficient, and that this motion would add to the Crown a parliamentary power during the recess, and which was designed to be put in practice every year. There never was a vote of credit before Queen Anne's time. The thing had lately been brought into fashion, and was carried on with great zeal by the present administration. Money ought not to be trusted in the hands of those who would not apply it to our support.

In reply to the observations which were urged by the opponents of the motion, Lord Hardwicke spoke in substance as follows; his sentiments being reported by Bishop Secker.\* A lucid analysis of the arguments of the opposite speakers was made by him, and is among his papers.

"*Lord Chancellor Hardwicke.* If I did not think this would be executed as a British measure, nothing should induce me to be for it. It is not true that one grain cannot be safely added to the Crown. I could name powers that have been taken away, and had better be there. This is not a vote of credit or confidence. There could be no votes of credit till the clauses of appropriation came into acts of Parliament, which was after the Revolution. The ministers were forbidden to apply money to any other purposes than the specified

\* Hans. Parl. Hist.

purposes there mentioned; which they were not forbidden before. Votes of credit, strictly, are to enable the Crown to contract a debt to be answered by Parliament hereafter. But this is a demand of a supply for purposes specified just as much as at the beginning of a session."

The motion was carried by 76 against 25.

On the 25th of April the session was closed, after a speech from the throne, the draught of which appears to have been settled by Lord Hardwicke; and Parliament was dissolved immediately afterwards.

On the eve of the general election, which took place in the summer of 1741, Sir Robert Walpole was violently assailed for miscarriages which he had in vain laboured to prevent. His repugnance to the war with Spain drew on him the whole odium of the disasters with which it was attended, and the misfortunes on the Continent were attributed to the same cause. All these circumstances had a great influence on the election of members for the new Parliament. In England, the adherents of the Prince of Wales united with the country party against the ministerial candidates. The Duke of Argyle also exerted himself, and with great success, in opposition to ministers, in influencing the elections in Scotland. Notwithstanding, therefore, the whole weight of ministerial interest, which was exercised to the full on this occasion, the party in opposition to the Government appeared to preponderate in the new Parliament.

Among the Chancellor's papers is a "Computation of the Ho. of Commons elected in 1741, made before their meeting," which contains a calculation as to the sentiments of each member. The total number of members returned by the English counties and boroughs at this time was 473. Of these 242 are set down as "for the court," and 231 as "against the court." Yorkshire

appears to have been then the stronghold of Whiggism, as out of the 30 county and borough members returned by it, 23 were for the court, and only 7 against it. And it is singular that Cambridgeshire, in which the Chancellor's principal estates lay, was the only county in which all the members returned, being 6, were favourable to the Whig interest. Hampshire returned 22 for, and 4 against the court. Lancashire 14 for, and 4 against it. On the other hand, Bedfordshire, Cheshire, and Leicestershire each returned 4 county and borough members, all against the court. In Oxfordshire the whole 9 were on the Tory side.

The cinque ports returned 16 members, of which 11 were for the court and 5 against it. Wales returned 24 members, of which 14 were for the court, and 10 against it. Scotland returned 45, 17 of them being Whigs and 24 Tories. The whole Parliament was estimated at—

For the court . 284

Against the court 270

Besides which there were four double returns.

At the commencement of the year 1741, we find a letter from the Earl of Macclesfield, the son and successor to the titles of the late Chancellor, and who was eminently distinguished for his mathematical and scientific attainments, to Lord Chancellor Hardwicke, asking for his interest on behalf of Dr. Bradley to succeed Dr. Halley in the Professorship of Astronomy at Greenwich. Lord Macclesfield, who was no mean authority on such a subject, in this letter bears testimony to Lord Hardwicke's patronage of learning and learned men, but for the want of which Lord Campbell and others have most unfairly censured him.

“ It is not only my friendship for Mr. Bradley, that

makes me so ardently wish to see him possessed of that professorship, it is my real concern for the honour of the nation with regard to science. For as our credit and reputation has hitherto not been inconsiderable amongst the astronomical part of the world, I should be extremely sorry we should forfeit it all at once, by bestowing upon a man of inferior skill and abilities, the most honourable, though not the most lucrative post in that profession ; a post which has been so well filled by Dr. Halley and his predecessor,\* when at the same time we have amongst us a man known by all the foreign professors as well as our own, not to be inferior to either of them, and one whom Sir Isaac Newton was pleased to call the best astronomer in Europe. . . . Nor can I apply on this occasion to a more proper person than your lordship, who not only in your private character but by your publick office likewise, are the patron of learning and learned men in general. It was upon this foot that my father, when in the post which you now enjoy, took upon him to recommend Dr. Halley to the Royal Professorship at Greenwich, and Mr. Bradley to the Pavilion at Oxford, and succeeded in both his recommendations ; and he always thought it for his honour to have recommended two so able men. . . .

“ Lady Macclesfield desires to join with mee in proper respects to Lady Hardwicke.”

Dr. Bradley was shortly afterwards appointed to the professorship.

Another epistle from the pen of our venerable friend, Mr. Justice Fortescue Aland, who appears at length, though not so soon as he intended, to have resigned his judicial situation, and desired the Chancellor's good

\* Sir Isaac Newton.

office to obtain him a pension for his long services, was addressed to Lord Hardwicke in April. The ex-Judge's name does not appear among the newly elected members of the House of Commons, nor is there any allusion to his political *début* in his letters. The picture referred to was probably a copy of Lord Chancellor Macclesfield's portrait, which Lord Hardwicke had had painted for himself.

“MY LORD,\*—Inclosed your Lp. has a late precedent in relation to my petition; w<sup>ch</sup> rarely or never was denied; especially, to one who has served so long; & I hope w<sup>th</sup>out disgrace to the cushion he sat on.

“I had waited on your Lordship in person, but I was told it was not as yet proper.

“I hope your Ldp. did receive Ld. Macclesfield's picture; I shou<sup>d</sup> be glad to know who copied it. If yo<sup>r</sup> Ldp. dos not think my attendance necessary, I sh<sup>d</sup> willingly go out of Town, to-morrow afternoon; & return when yo<sup>r</sup> Lord<sup>sh</sup> pleased, for y<sup>e</sup> country air dos me a great deal of good. I wish yo<sup>r</sup> Lp. & family all the blessings of life, & am ever,

“My Lord,

“Yo<sup>r</sup> L<sup>d</sup>p's most devoted & dutiful servant,

“J. FORTESCUE A.

“*Serj's Inn, 30<sup>th</sup> Apr., 1741.*”

His Majesty again went to Hanover in the month of May in this year, and Lord Hardwicke was appointed one of the lords justices during his absence. The activity and ability of the Chancellor at the council board, even while Sir Robert Walpole was the minister, is shown by the extensive minutes, all in his own handwriting, which were prepared by him previous to a meeting of the council on the 21st of May, relating to

\* Hardwicke MSS., Wimpole.

the different departments of the government, including foreign and military as well as domestic affairs.

In July, Lord Hardwicke's friend, Dr. Herring, the Bishop of Bangor, wrote to him from his see, and gave an account of a tour through his diocese, which he had been making, and described the condition of that part of the country, which was at that time suffering from a double calamity—the sickness and dearth then prevalent throughout the kingdom, and the late contested elections with which it had been agitated.

In a later part of this same year, Mr. Baron Mountney, the Irish judge, wrote to Lord Chancellor Hardwicke a letter, in which, after referring to the “unparalleled obligations” which the latter had conferred upon him, he says—

“Your lordship, not content with exerting the most exalted goodness, & the most engaging condescension towards me in England, has pursued me with still fresh obligations to this kingdom, and extended your unbounded kindness to me to every, the minutest circumstance upon which my favourable & agreeable reception here cou<sup>d</sup> possibly depend. To thank your Lords<sup>p</sup> for this vast profusion of favours—to call you my patron—my benefactor—wou<sup>d</sup> be cold and lifeless, in comparison with that warmth of language w<sup>ch</sup> my heart is constantly speaking to your Lords<sup>p</sup>.”\*

Lord Chancellor Jocelyn, in a letter to Lord Chancellor Hardwicke written from Ireland, in the course of this year, mentioned the distressed state of that country at this period, owing to the entire failure of the potato crop which had occurred, and which was followed by famine and disease to a frightful extent, the account of which bears a close resemblance to that of the calamities

\* Hardwicke MSS., Wimpole.

with which the same unfortunate country has been lately visited.\*

The friendship already subsisting between the Lord Chancellor and the Duke of Newcastle, and his brother, Mr. Pelham, has before been alluded to, and some of the correspondence between them has also been given. This feeling ripened into a strict intimacy, and even affection, as they gained more experience of each other's dispositions and character. Between the two brothers, as well as between the Duke and Sir Robert Walpole, Lord Hardwicke frequently acted as a mediator, and his amicable interference was attended with the same success, though he often joined with Mr. Pelham in opposing the system of foreign policy adopted by the Duke.

Soon after the prorogation, and the King's departure for Hanover in 1740, the division in the cabinet increased to so high a degree that at one time the continuance of Walpole and Newcastle together in office seemed incompatible. Lord Hardwicke, Mr. Walpole, and Mr. Pelham, however, exerted themselves to effect a reconciliation, and promises were made on both sides to act with renewed cordiality, which subsequent events would lead us to suppose were mistaken for resolutions to encounter each other with increased animosity. Lord Chancellor Hardwicke's extensive influence over both the brothers is obvious from many of the letters which passed between them, and the following one will evince their high estimation of his friendship, and their profound respect for his judgment.

Of this letter Archdeacon Coxe observes, in his *Memoirs of the Pelham Administration*, in which part of it is quoted, "We have deemed it but justice to the character of Lord Chancellor Hardwicke to submit the above letter,

\* Hardwicke MSS., Wimpole.

and that which follows," (which is here also extracted from,) "to the reader, because they evince, beyond the possibility of cavil, the falsehood of those assertions with which a late noble writer\* has aspersed the reputation of this eminent statesman and lawyer, when he says, 'in the House of Lords he was laughed at, in the cabinet despised.' "

*"Newcastle House, Tuesday morning.†*

"MY DEAR LORD,—As I have not had the pleasure of any private discourse with you, for some time, & am always desirous of it whenever I can, & you will permit me, if you will give me leave, I will wait upon you this evening, between eight & nine. I shall dine at Mr. Winnington's, in Conduit Street; & if I hear nothing from you, will be at Powis House before nine. Give me leave only to beg one favour of you. I have observed, as I ment<sup>d</sup> some time ago, less activity in business than formerly, which I have feared may arise from an inclinat<sup>n</sup> to withdraw from the active part of it, by degrees, & confine yourself chiefly to your own office. If this is in any measure the case, I must beg you wo<sup>d</sup> consider in what situation you will leave me; diffident of myself, doubtful with<sup>t</sup> the previous advice & opin<sup>n</sup> of my friends, (& as to that I must reckon only my brother & yourself,) whether measures started in a hurry, often first in the closet, executed with precipitat<sup>n</sup>, are or may be advisable; & utterly unable, with<sup>t</sup> the assistance above ment<sup>d</sup>, to resist by myself the torrent. My brother has all the prudence, knowledge, experience, & good inten<sup>n</sup> that I can wish or hope in a man; but it will, or may, be difficult for us alone to stem that which, with your weight, authority, & character, wo<sup>d</sup> not be twice mentioned. *Besides, my brother & I may differ in opin<sup>n</sup>, in w<sup>ch</sup> case, I am sure*

\* Horace Walpole, Earl of Orford.

† Hardwicke MSS., Wimpole.

*your's would determine both.* There has been for many years a unity of thought & act<sup>n</sup> between you & me; &, if I have ever regretted any thing, it has been, (forgive me for saying it,) too much caution in the execution, which I have sometimes observed has rather produced, than avoided, the mischief apprehended.

“Forgive me, therefore, my dear lord, if I own most freely to you, that it will be impossible for me, in these circumstances, to go on with credit & security to myself, or with advantage to my friends, if the world don't see & understand, that you, my brother, & I, are one; not in the tho<sup>t</sup> only, but in action; not in act<sup>n</sup> barely, but in the first conception or digestion of things. This will give us real weight; this will add strength to us in the closet, & in the ministry, but this can be done only by yourself. I have desired my brother to talk very fully to you, who I believe, intends it some evening this week. I think I can guess from whence, or rather from what, any tendency to what I so much apprehend can arise. That is to be prevented only by the union I have recommended amongst us three.

“If, which I can't suppose, I should be so far mistaken that when I am looking out for other causes, you should really have taken something amiss in me, or in my manner, the favour I beg, as I said at first, is that you would freely tell me so. I will as freely own, if there is the least glimpse of a found<sup>n</sup> for it. But, as I know my own heart, I find it full of all the love, attent<sup>n</sup>, gratitude, & regard for you, that it is possible for one to have for another.”

The large share of influence which Lord Hardwicke possessed, even during the administration of Sir Robert Walpole, not only over the Duke of Newcastle and his

brother, but over the whole cabinet, is also strikingly manifested by the following quotation from a letter of the Duke to the Chancellor, which bears date the 14th October, 1739.\*

“The great and deserved weight and credit which your lordship has, both in the House of Lords and in the council, arise undoubtedly from those great qualities, which are inseparable from you, to which those that are at present in the King’s service, in the House of Lords, do the greatest justice, and pay the greatest deference; and it is no disagreeable circumstance, in the high station in which your Lordship is, that every man in the House of Lords knows, that yours is the sense of the King’s administration, and that their intent goes with their inclinations, when they follow your lordship.”

Sir Robert Walpole had ever been desirous of pursuing a pacific line of policy, and anxiously laboured to avoid a rupture with Spain, especially at this period when no dependence could be placed on the assistance of any of our allies on the Continent. But the clamours of the people, and the solicitation of his colleagues at length compelled him to consent to a declaration of war. The event fully justified his forebodings. The colonies of Spain were attacked, which were considered the only vulnerable part of her dominions, but with the most disastrous consequences. The useless conquest of Porto Bello was relinquished; the assault on Carthagena was unsuccessful; and the meditated attempt upon the Havannah being abandoned, the fleets returned to England with the loss of 20,000 men, and the expenditure of 6,000,000 sterling.

The King of France having threatened an invasion of Hanover, in the year 1741, the King of England, unable to defend his German dominions against this attack, on the 27th of September, 1741, signed a treaty, in his electoral capacity, for the neutrality of Hanover, by

\* Cox’s Pelham.

which he pledged himself not to oppose the advance of the French and their allies into the Austrian territories, nor to continue the march of his succours, destined for the Queen of Hungary. He also engaged not to obstruct the elevation of the elector of Bavaria to the Imperial Throne. This agreement the King entered into without consulting his English ministers, nor was Sir Robert Walpole himself informed of the transaction until the conditions were arranged, when it was announced to him in a private letter from the King, which he received in the presence of the Duke of Newcastle, without betraying the slightest hint of its contents. His reluctant acquiescence having been obtained, an official account of the negotiation was afterwards transmitted by Lord Harrington, from Hanover, to his brother secretary, and the rest of the ministers.\*

The following letter from the Duke of Newcastle to the Lord Chancellor, was written about two months before the signature of the treaty.

*“ Claremont, July 19, 1741.†*

“ MY DEAR LORD,—As I have more occasion for your lordship’s friendship & assistance now, than I have almost ever had, at least upon any publick consideration, I flatter myself that you will easily forgive this trouble ; which is to transmit to you the most material of the letters, that came yesterday by a messenger from Hanover. They found me at S<sup>r</sup> Robt. Walpole’s, at New Park ; &, what is surprising, the same messenger brought a letter to Sir Rob. Walpole, from the King, in his own hand, (tho’ I did not see it,) directing him to send the quarter’s subsidy of £75,000, in such manner, that the King might receive £50,000 of it, tho’ neither the

\* Coxe’s Pelham.

† Hardwicke MSS., Wimpole.

English, nor electoral treaties are satisfied. Sir Rob. read L<sup>d</sup> Harrington's letters, hy himself; &, after dinner, we discoursed upon them, in the presence of the Duke of Grafton, Duke of Devonshire, & Mr. Stone. It soon appeared, that Sir Robert repented in great measure of the opinion that was sent last week, by flinging out hints of his acquiescence, &c. And seemed determined, himself, to depart from it, or explain it off; and in order thereto, insisted, that these letters from Hanover altered the state of the question. I stated, & lamented, the Hanover influence, which had brought many of these misfortunes upon us, which occasioned a warm, & very unbecoming reply from Sir R. Walpole. And, upon the whole, he said that if I was determined to go into Sussex, he wo<sup>d</sup> write his own opinion to the King, upon this great question; & so I left him. But upon consideration, finding that he was determined to take it so high, and to write to the King himself, in answer to letters wrote by Lord Harrington to me, & considering the subject of those letters, I was afraid that the King might think that his more immediate interests had been neglected, or treated with indifference by me, & his other servants; & therefore I determined to put off my journey till to-morrow, when I must absolutely go into Sussex. I must therefore most earnestly beg that you will not refuse to meet me at Newpark, this afternoon, before six o'clock, when I will not fail to be there; and I have, this morning, sent Sir R. Walpole word, that I have sent to you for this purpose. My dear lord, I know it will be disagreeable; I know it will be hurrying; but I beg that you wou<sup>d</sup> comply; for when we have such points, & such persons, to manage, these incidents cannot be avoided. I send you the letter which went to Hanover last Wednesday, that you may see whether any thing can be departed

from, consistent with the opinion which we gave upon the most serious consideration. For my own part, I think, if we cou<sup>d</sup> & wou<sup>d</sup> advise the electoral neutrality, it wou<sup>d</sup> not signify a farthing. The King, if he has a mind to do it, & can do it, will do it without us ; on the other hand, I think, there is reason to hope, from Mr. Trevor's letter & the others, that things, tho' bad, are yet not so desperate as they are represented ; nor even the accommodation with Prussia : and I am of opinion, that the most solid advice, both for England & Hanover, wou<sup>d</sup> be, to renew forthwith with the Court of Vienna, in a cordial manner, the concert for operations ; to endeavour to get Saxony, Russia, & the States General into it ; and to send the King word, that we will send the 12,000 men to his assistance with the utmost expedition. Adieu till six this evening, ever yours,

“ HOLLES NEWCASTLE.”

The Duke of Newcastle, says Coxe, denounced the conditions of this treaty in favour of Hanover, as dishonourable to England and the allies, while he indignantly protested against the secrecy with which the negotiation had been conducted. Disdaining to suppress his feelings, he inveighed against the conduct of the King, in terms which to his brother seemed both intemperate and disrespectful. Mr. Pelham wrote to him, endeavouring to soothe his indignation by placing the affair in a more favourable light, and by showing him that the King had no other means of diverting the overwhelming force of France.

The letter proved, however, unavailing ; and in one to the Lord Chancellor, dated 18—29 September, the Duke of Newcastle designated this neutrality as a disgraceful abandonment of the House of Austria. He

proposed that the ministers in England should transmit to Lord Harrington a strong remonstrance, representing the great unpopularity and impolicy of the treaty, and requesting His Majesty to reconsider it. He even gave it as his opinion that, if it were actually concluded, the cabinet should make a solemn appeal to every court in Europe, declaring that, as King of England, His Majesty would adhere to the engagements contracted with the court of Vienna, by the treaty of 1731, and employ his best efforts to maintain the liberties of Europe, in concert with those powers who should be disposed to support the House of Austria. After recommending that these assurances should be conveyed specifically to the Queen of Hungary, the court of St. Petersburg, and the States General, he added these strong expressions :—

“ If something of this kind be not immediately done, the electoral neutrality will be, to all intents and purposes, a royal neutrality; and the English ministers, who acquiesce in the one, will thus make themselves the authors of the other, and the Lord have mercy upon them.”

A proposition so likely to offend the King, deeply mortified Sir Robert Walpole, and was far from receiving the approbation of the other ministers. Yet when a formal communication of the treaty was made by Lord Harrington to the British Cabinet, the Duke of Newcastle persisted in his objections, though unsupported by any of his colleagues, and formed a resolution to resign, as will appear by the following letter which he wrote to his brother.\* His friendship for, and high opinion of Lord Hardwicke are apparent here.

\* Pelham Papers.

“ *Claremont, Oct. 2—13, 1741.\** ”

“ Whenever I reflect seriously upon the present situation of the administration, and of publick affairs, I cannot but be of opinion that it is very improper for me to continue in business. I desire we may not enter into a dispute by what means, or by whose fault : but the fact I am afraid is certain, that there is no one in the active part of the ministry that has either any confidence at present in me, or I in him, except my Lord Chancellor. And though I am thoroughly persuaded that he has a private friendship for me, which cannot be exceeded, and has seldom been known in men in his station, yet I have seen too much of administrations to imagine that that will extend itself to a thorough ministerial concurrence in thought, views, and actions, and therefore my present consideration is confined singly to myself. Perhaps I may, and I hope I do, judge wrong ; but I must own freely to you that I think the King’s unjustifiable partiality for Hanover, to which he makes all other views and considerations subservient, has manifested itself so much, in the conduct of this summer, that no man can continue in the active part of the administration with honour and satisfaction to himself ; for he must either own he was a cypher, which, perhaps, I think is in a great measure the case of every minister, without exception, that was in England, or he must be thought to have advised and concurred in measures, which, in my opinion, are both dishonourable and fatal to the interests of all Europe, and consequently to those of this country in particular. I have endeavoured to see how this can be avoided, and hitherto I have not been able to find out. I have consulted nobody but Lord Chancellor and yourself, and you know all that has passed between us two.”

The day of the noble Duke’s abandonment of office was as yet, however, very far distant indeed ; and for many years he continued to talk of his resignation and to murmur at his colleagues, without any other result being produced, than an occasional remonstrance to him from the Chancellor.

In a letter written about this time by the Duke of Newcastle to the Lord Chancellor, in reference to some

family affairs of the former, in which the Chancellor had assisted him, the Duke says :—

“ Every thing was settled between my brother and I, and all disputes that might arise between us referred to you, on whom we both entirely rely. Give me leave now, my dearest lord, to return you my most sincere thanks for having conducted this important affair to so near a conclusion. Nothing but your friendship and authority could have done it so speedily and so successfully. Nobody is displeased, and most of us extremely happy. I have ever looked upon it as one of the greatest happinesses of my life, to have had such a share of your friendship and confidence, the extent of which is as uncommon as the power and ability of exerting it. Were I to indulge myself on this subject, I sho<sup>d</sup> trespass too long upon your time, w<sup>ch</sup> I hope is more usefully spent for your friends, in the perfect re-establishment of y<sup>r</sup> health.”\*

A passage in another letter, respecting the same matter, written soon afterwards by the Duke to Lord Hardwicke, contains a reference to an advocate who was at this period making rapid progress in his rise to the highest honours of his profession.

“ I cannot but think myself greatly indebted to Mr. Murray, who from the great pains he has taken in the way of his profession, has singly procured the consent of all parties, without which I should not have been thoroughly easy. I should be glad to make him any proper return ; and as promotions in the law are now stirring, might I submit it to your Lordship whether

\* Hardwicke MSS., Wimpole.

Mr. Murray might not be made one of the King's counsel. His ability nobody will doubt, and I will be answerable he shall do nothing unbecoming that station, or that shall reflect upon those who shall recommend him to it. You know, my dear Lord, the reason I ask this favour of you, and for him ; and you must therefore know how greatly I shall be obliged to you if it can be granted, and that is all I shall say upon the occasion.

“ You may mention this to my brother if you think proper.”\*

Mr. Murray's promotion, it will be seen, followed, by the Chancellor's intervention, at no distant period.

In the year 1732, during the period that Lord Hardwicke filled the office of Attorney-General, among other persons of merit, and whose pursuits were of an intellectual nature, that were favourably recommended to his notice and friendship, was a Mr. Birch, who became afterwards much distinguished as an historical and biographical writer, and by whom some of the papers relating to Lord Hardwicke's career, which form the materials for this memoir, were collected together and deposited in the British Museum.

Mr. Birch was born in London in November, 1705. His parents were Quakers, and his father carried on the trade of a coffee-mill maker, for which business the son was designed, but the strong desire which he displayed for reading and study overruled this intention. On the assurance that, if permitted to indulge in his favourite pursuits, he would not render the change in his mode of life burdensome to his father, he was allowed to take his own course, and for several years he acted as a teacher

\* Hardwicke MSS., Wimpole.

in different schools. At each new engagement he endeavoured to obtain introduction to a position which afforded him superior opportunities for study ; and in all of them he sedulously applied to the acquisition of knowledge, stealing many hours from sleep for this purpose. His efforts were not without success ; and in 1729, when he was in his twenty-fourth year, being qualified to take orders, he was ordained a minister of the Church of England, without having been a member of either university. He married in the same year, but lost his wife in less than twelve months.

From the time of his introduction to Lord Hardwicke, it is agreed by all his biographers that the Chancellor never lost sight of him. And though the anonymous writer\*, to whose attacks on Lord Hardwicke and his family I have several times referred, deliberately accuses him of gross neglect of Dr. Birch, who, he asserts, was suffered to remain in want and obscurity, yet so utterly devoid of truth is this calumny, that it appears that the very year in which Dr. Birch became known to Lord Hardwicke, then Sir P. Yorke, he obtained through his influence the living of Ulting, in the county of Essex, which was in the gift of the Crown. At different periods no less than nine different benefices (two of them being united parishes) were held by Dr. Birch ; others also were offered to him which he declined : all that he obtained, he was either presented to by, or at the instigation of, Lord Hardwicke. From the reckless manner in which the calumniator of the Chancellor has dealt out his assertions in this instance, where I have been fortunately able to give them direct contradiction, we may judge how far they are to be relied on in those other cases

\* Letter in Cooksey's Memoirs. *Vide* also Lord Campbell's Lives of the Chancellors.

where it is out of my power to adduce any proof in refutation of them, beyond the obvious improbability and inconsistency of the story of this worthless fabricator.

In 1734 Dr. Birch was elected a fellow of the Royal Society, and in 1752 he became one of its secretaries. During the former year he was appointed chaplain to the unfortunate Earl of Kilmarnock. In 1753 the University of Aberdeen conferred upon him the distinction of doctor in divinity, and he received a similar honour the same year from Lord Hardwicke's friend, Dr. Herring, then Archbishop of Canterbury.

Dr. Birch was most active and indefatigable in his literary pursuits. Distinguished by unwearied industry rather than by acuteness and discrimination, he accumulated in the course of his life a vast mass of materials, of great value to those who possess a superior understanding, without the Doctor's spirit of laborious research. The earliest work of importance in which he was engaged was the General Dictionary, Historical and Critical. The first volume appeared in 1734, and the last in 1741. In 1742 he published Thurloe's State Papers, in 7 vols. folio, with a dedication to Lord Hardwicke, in which he compliments the Chancellor on his knowledge and acquirements, and acknowledges fully the author's obligations to him. Several other undertakings proceeded from his pen, and he also transcribed a great number of volumes in the Lambeth library. His last biographical work was Letters, Speeches, Charges, and Advices of Lord Chancellor Bacon, a subject which will be found to be occasionally alluded to in his correspondence.

Mr. Philip Yorke, and Mr. Charles Yorke, the eldest and second sons of the Chancellor, both of whom became distinguished in after life for their intellectual

acquirements, appear to have formed at this period of our history a close friendship with Dr. Birch. Several volumes of letters, and drafts of letters, which passed between Dr. Birch and the different members of the Yorke family, including the Chancellor, are to be seen among the MSS. in the British Muscum, and to which I shall have occasion to resort in the course of this memoir. Rough drafts of Dr. Birch's letters are here preserved, and which are among the most curious manuscripts contained in that vast collection, independent of their literary value, as the rarest specimens of penmanship hitherto discovered. Nothing that could be resorted to to promote their obscurity and illegibility seems to have been omitted. The hand of the writer appears to have been by nature singularly unintelligible; while the erasures and obliterations with which every line is adorned, and the numerous interpolations of little words which are seen running about in all directions after their larger relatives, render as complete as the art of man could do the disorder throughout the page. The paper is rough and greasy, and of the worst description for writing upon, though admirably well matched by ink of a corresponding quality. The reverence in which Dr. Birch's amanuensis doubtless held him seems to have led him to an absolute unconditional surrender of his own judgment in transcribing his master's manuscripts, and he has been ambitious enough to aim rather at effecting striking facsimiles of many of the letters than faithful relations of the words used. In his copies of Latin documents, however, the scribe in question has ventured occasionally to call in the aid of his own reason to direct him, where the illegibility of the Doctor had reached absolute perfection. In one instance, the family appellation of *pater* he

transforms, by a very simple change, into the apostolic name Peter, and the martial Latin term *belli*, by the mere substitution of a *y* for the last letter, he converts into an English substantive of an entirely pacific character. It is satisfactory, however, to have the high authority of Lord Chancellor Hardwicke for bestowing a large and liberal measure of abuse on the handwriting of one to whose labours I am nevertheless much indebted.

• The first of the letters which we find among the collection of those which passed between the members of the Yorke family and Dr. Birch, is a copy of part of one from the eldest son of the Chancellor to his father, recommending Mr. Birch to his notice. From this it appears that the Chancellor's first preferment of this learned and useful author was not very extensive, as at this time he is mentioned by Mr. Yorke as having only a small living, scarcely sufficient for the maintenance of a curate, which must have been the one which he had obtained through Lord Hardwicke's interest, when the latter was Attorney-General. The following is the letter alluded to :—

“ *November 10th, 1741.\**

“ MY LORD,—I am extremely sensible of your care and goodness in every thing which relates to me and my affairs, and in this particular instance, of the deputy tellership, depend on no advice and judgment but your lordship's. . . . .

“ I should be very sorry if you thought me impertinent in the request I am going to make of you, for I hope there is no danger of my ever being importunate in it, when I have mentioned the person. It is, my

\* Hardwicke MSS., Wimpole.

lord, to recommend Mr. Birch to your protection, whenever an opportunity offers. From my own acquaintance with him, I can only confirm the general character he bears of being a clergyman of great worth, industry, and learning, publishing at the mercy of booksellers and printers, without any preferment but a small living in the country, which will scarce keep a curate. He is a person of an excellent heart, as well as head; and by his diligence, and general knowledge in most parts of learning, may be made extremely useful to the public. His friends are as solicitous for his success in life, as he himself is easy about it. And, (were it worth mentioning,) I can assure your lordship this application is not owing to the most distant hint or insinuation of his. With these qualities, and this worth to recommend him to preferment, he has yet obtained none. It depends upon your lordship, ever ready to discover and reward merit, to take notice of this, which without gratifying a noble family, or strengthening a parliamentary interest, will give great satisfaction to all good men.

“ I beg you would put mama in mind of sending a bank bill for the Duchess, and believe me,

“ My Lord, with the highest respect,

“ Your most dutiful and obliged son,

“ P. YORKE.”

It does not appear that any particular result followed this application. Indeed, by the next letter, which is from Mr. Charles Yorke to Mr. Birch, it seems that he still continued without further preferment: It should, however, be borne in mind that in the first place it was necessary in a case of this sort to wait for a vacancy before a living could be offered; and that good preferment of a suitable kind for a literary man of









